

# Robert M. La Follette, Sr.

## FREE SPEECH IN WARTIME <sup>1</sup>

October 6, 1917

(In the Senate)

Mr. President, I rise to a question of personal privilege.

I have no intention of taking the time of the Senate with a review of the events which led to our entrance into the war except in so far as they bear upon the question of personal privilege to which I am addressing myself.

Six members of the Senate and fifty members of the House voted against the declaration of war. Immediately there was let loose upon those senators and representatives a flood of invective and abuse from newspapers and individuals who had been clamoring for war, unequaled, I believe, in the history of civilized society.

Prior to the declaration of war every man who had ventured to oppose our entrance into it had been condemned as a coward or worse, and even the president had by no means been immune from these attacks.

Since the declaration of war the triumphant war press has pursued those senators and representatives who voted against war with malicious falsehood and recklessly libelous attacks, going to the extreme limit of charging them with treason against their country.

This campaign of libel and character assassination directed against the members of Congress who opposed our entrance into the war has been continued down to the present hour, and I have upon my desk newspaper clippings, some of them libels upon me alone, some directed as well against other senators who voted in opposition to the declaration of war.

One of these newspaper reports most widely circulated represents a federal judge in the state

of Texas as saying, in a charge to a grand jury—I read the article as it appeared in the newspaper and the headline with which it is introduced:

### DISTRICT JUDGE WOULD LIKE TO TAKE SHOT AT TRAITORS IN CONGRESS

[By Associated Press leased wire.]

Houston, Tex., October 1, 1917.

Judge Waller T. Burns, of the United States district court, in charging a Federal grand jury at the beginning of the October term to-day, after calling by name Senators STONE of Missouri, HARDWICK of Georgia, VARDAMAN of Mississippi, GRONNA of North Dakota, GORE of Oklahoma,<sup>2</sup> and LA FOLLETTE of Wisconsin, said:

If I had a wish, I would wish that you men had jurisdiction to return bills of indictment against these men. They ought to be tried promptly and fairly, and I believe this court could administer the law fairly; but I have a conviction, as strong as life, that this country should stand them up against an adobe wall to-morrow and give them what they deserve. If any man deserves death, it is a traitor. I wish that I could pay for the ammunition. I would like to attend the execution, and if I were in the firing squad I would not want to be the marksman who had the blank shell.

The above clipping, Mr. President, was sent to me by another federal judge, who wrote upon the margin of the clipping that it occurred to him that the conduct of this judge might very properly be the subject of investigation. He inclosed with the clipping a letter, from which I quote the following:

<sup>2</sup> William J. Stone (1848-1918) served in the Senate, 1903-1919; Thomas W. Hardwick (1872-1944) served in the Senate, 1914-1919; James K. Vardaman (1861-1930) served in the Senate, 1913-1919; Asle J. Gronna (1858-1922) served in the Senate, 1911-1921; Thomas P. Gore (1870-1949) served in the Senate, 1907-1921 and 1931-1937.

<sup>1</sup> U.S., Congress, Senate, *Congressional Record*, 65th Cong., 1st sess., pp. 787-86.

I have been greatly depressed by the brutal and unjust attacks that great business interests have organized against you. It is a time when all the spirits of evil are turned loose. The Kaisers of high finance, who have been developing hatred of you for a generation because you have fought against them and for the common good, see this opportunity to turn the war patriotism into an engine of attack. They are using it everywhere, and it is a day when lovers of democracy, not only in the world, but here in the United States, need to go apart on the mountain and spend the night in fasting and prayer. I still have faith that the forces of good on this earth will be found to be greater than the forces of evil, but we all need resolution. I hope you will have the grace to keep your center of gravity on the inside of you and to keep a spirit that is unclouded by hatred. It is a time for the words, "with malice toward none and charity for all." It is the office of great service to be a shield to the good man's character against malice. Before this fight is over you will have a new revelation that such a shield is yours.

If this newspaper clipping were a single or exceptional instance of lawless defamation, I should not trouble the Senate with a reference to it. But, Mr. President, it is not.

In this mass of newspaper clippings which I have here upon my desk, and which I shall not trouble the Senate to read unless it is desired, and which represent but a small part of the accumulation clipped from the daily press of the country in the last three months, I find other senators, as well as myself, accused of the highest crimes of which any man can be guilty—treason and disloyalty—and, sir, accused not only with no evidence to support the accusation, but without the suggestion that such evidence anywhere exists. It is not claimed that senators who opposed the declaration of war have since that time acted with any concerted purpose either regarding war measures or any others. They have voted according to their individual opinions, have often been opposed to each other on bills which have come before the Senate since the declaration of war, and, according to my recollection, have never all voted together since that time upon any single proposition upon which the Senate has been divided.

I am aware, Mr. President, that in pursuance of this general campaign of vilification and attempted intimidation, requests from various individuals and certain organizations have been submitted to the Senate for my expulsion from this body, and that such requests have been re-

ferred to and considered by one of the committees of the Senate.

If I alone had been made the victim of these attacks, I should not take one moment of the Senate's time for their consideration, and I believe that other senators who have been unjustly and unfairly assailed, as I have been, hold the same attitude upon this that I do. *Neither the clamor of the mob nor the voice of power will ever turn me by the breadth of a hair from the course I mark out for myself, guided by such knowledge as I can obtain and controlled and directed by a solemn conviction of right and duty.*

But, sir, it is not alone members of Congress that the war party in this country has sought to intimidate. The mandate seems to have gone forth to the sovereign people of this country that they must be silent while those things are being done by their government which most vitally concern their well-being, their happiness, and their lives. Today and for weeks past honest and law-abiding citizens of this country are being terrorized and outraged in their rights by those sworn to uphold the laws and protect the rights of the people. I have in my possession numerous affidavits establishing the fact that people are being unlawfully arrested, thrown into jail, held incommunicado for days, only to be eventually discharged without even having been taken into court, because they have committed no crime. Private residences are being invaded, loyal citizens of undoubted integrity and probity arrested, cross-examined, and the most sacred constitutional rights guaranteed to every American citizen are being violated.

It appears to be the purpose of those conducting this campaign to throw the country into a state of terror, to coerce public opinion, to stifle criticism, and suppress discussion of the great issues involved in this war.

I think all men recognize that in time of war the citizen must surrender some rights for the common good which he is entitled to enjoy in time of peace. *But, sir, the right to control their own government according to constitutional forms is not one of the rights that the citizens of this country are called upon to surrender in time of war.*

Rather in time of war the citizen must be more alert to the preservation of his right to

control his government. He must be most watchful of the encroachment of the military upon the civil power. He must beware of those precedents in support of arbitrary action by administrative officials, which excused on the plea of necessity in wartime, become the fixed rule when the necessity has passed and normal conditions have been restored.

More than all, the citizen and his representative in Congress in time of war must maintain his right of free speech. More than in times of peace it is necessary that the channels for free public discussion of governmental policies shall be open and unclogged. I believe, Mr. President, that I am now touching upon the most important question in this country today—and that is the right of the citizens of this country and their representatives in Congress to discuss in an orderly way frankly and publicly and without fear, from the platform and through the press, every important phase of this war; its causes, the manner in which it should be conducted, and the terms upon which peace should be made. The belief which is becoming widespread in this land that this most fundamental right is being denied to the citizens of this country is a fact the tremendous significance of which, those in authority have not yet begun to appreciate. I am contending, Mr. President, for the great fundamental right of the sovereign people of this country to make their voice heard and have that voice heeded upon the great questions arising out of this war, including not only how the war shall be prosecuted but the conditions upon which it may be terminated with a due regard for the rights and the honor of this nation and the interests of humanity.

I am contending for this right because the exercise of it is necessary to the welfare, to the existence, of this government, to the successful conduct of this war, and to a peace which shall be enduring and for the best interest of this country.

Suppose success attends the attempt to stifle all discussion of the issues of this war, all discussion of the terms upon which it should be concluded, all discussion of the objects and purposes to be accomplished by it, and concede the demand of the war-mad press and war ex-

tremists that they monopolize the right of public utterance upon these questions unchallenged, what think you would be the consequences to this country not only during the war but after the war?

RIGHT OF PEOPLE TO DISCUSS WAR ISSUES <sup>3</sup>

Mr. President, our government, above all others, is founded on the right of the people freely to discuss all matters pertaining to their government, in war not less than in peace, for in this government the people are the rulers in war no less than in peace. It is true, sir, that members of the House of Representatives are elected for two years, the president for four years, and the members of the Senate for six years, and during their temporary official terms these officers constitute what is called the government. But back of them always is the controlling sovereign power of the people, and when the people can make their will known, the faithful officer will obey that will. Though the right of the people to express their will by ballot is suspended during the term of office of the elected official, nevertheless the duty of the official to obey the popular will continues throughout his entire term of office. How can that popular will express itself between elections except by meetings, by speeches, by publications, by petitions, and by addresses to the representatives of the people? Any man who seeks to set a limit upon those rights, whether in war or peace, aims a blow at the most vital part of our government. And then as the time for election approaches and the official is called to account for his stewardship—not a day, not a week, not a month, before the election, but a year or more before it, if the people choose—they must have the right to the freest possible discussion of every question upon which their representative has acted, of the merits of every measure he has supported or opposed, of every vote he has cast and every speech that he has made. And before this great fundamental right every other must, if necessary, give way, for in no other manner can representative government be preserved.

<sup>3</sup> The subheadings in this speech are La Follette's.

Mr. President, what I am saying has been exemplified in the lives and public discussion of the ablest statesmen of this country, whose memories we most revere and whose deeds we most justly commemorate. I shall presently ask the attention of the Senate to the views of some of these men upon the subject we are now considering.

Closely related to this subject of the right of the citizen to discuss war is that of the constitutional power and duty of the Congress to declare the purposes and objects of any war in which our country may be engaged. The authorities which I shall cite cover both the right of the people to discuss the war in all its phases and the right and the duty of the people's representatives in Congress to declare the purposes and objects of the war. For the sake of brevity, I shall present these quotations together at this point instead of submitting them separately.

#### DISCUSSION BY AMERICAN STATESMEN

Henry Clay,<sup>4</sup> in a memorable address at Lexington, Kentucky, on the 13th day of November, 1847, during the Mexican War, took a strong position in behalf of the right of the people to freely discuss every question relating to the war, even though the discussion involved a strong condemnation of the war policy of the executive. He also declared it to be not only the right but the duty of the Congress to declare the objects of the war. As a part of that address he presented certain resolutions embodying his views on these subjects. These resolutions were adopted at that meeting by the people present, and were adopted at many other mass meetings throughout the country during the continuance of the Mexican War.

For introducing in this body some time ago a resolution asserting the right of Congress to declare the purposes of the present war, I have, as the newspaper clippings here will show, been denounced as a traitor and my conduct characterized as treasonable.

As bearing directly upon the conduct for which I have been so criticized and condemned,

I invite your attention to the language of Henry Clay in the address I have mentioned.

He said:

But the havoc of war is in progress and the no less deplorable havoc of an inhospitable and pestilential climate. Without indulging in an unnecessary retrospect and useless reproaches on the past, all hearts and heads should unite in the patriotic endeavor to bring it to a satisfactory close. Is there no way that this can be done? Must we blindly continue the conflict without any visible object or any prospect of a definite termination? This is the important subject upon which I desire to consult and to commune with you. Who in this free government is to decide upon the objects of a war at its commencement or at any time during its existence? Does the power belong to collective wisdom of the nation in Congress assembled, or is it vested solely in a single functionary of the government?

A declaration of war is the highest and most awful exercise of sovereignty. The convention which framed our federal Constitution had learned from the pages of history that it had been often and greatly abused. It had seen that war had often been commenced upon the most trifling pretexts; that it had been frequently waged to establish or exclude a dynasty; to snatch a crown from the head of one potentate and place it upon the head of another; that it had often been prosecuted to promote alien and other interests than those of the nation whose chief had proclaimed it, as in the case of English wars for Hanoverian interests; and, in short, that such a vast and tremendous power ought not to be confided to the perilous exercise of one single man. The convention therefore resolved to guard the warmaking power against those great abuses, of which, in the hands of a monarch, it was so susceptible. And the security against those abuses which its wisdom devised was to vest the war-making power in the Congress of the United States, being the immediate representatives of the people and the states. So apprehensive and jealous was the convention of its abuse in any other hands that it interdicted the exercise of the power to any state in the Union without the consent of Congress. Congress, then, in our system of government, is the sole depository of that tremendous power.

Mr. President, it is impossible for me to quote as extensively from this address as I should like to do and still keep within the compass of the time that I have set down for myself; but the whole of the address is accessible to every senator here, together with all of the discussion which followed it over the country, and in these times it would seem to me worthy of the review of senators and of newspaper editors and of those who have duties to discharge in connection with this great crisis that is upon the world.

I quote further:

<sup>4</sup> Henry Clay (1777-1852). See Speeches No. 3, 6, 8, and 11.

The Constitution provides that Congress shall have power to declare war and grant letters of marque and reprisal, to make rules concerning captures on land and water, to raise and support armies, and provide and maintain a navy, and to make rules for the government of the land and naval forces. Thus we perceive that the principal power, in regard to war, with all its auxiliary attendants, is granted to Congress. Whenever called upon to determine upon the solemn question of peace or war, Congress must consider and deliberate and decide upon the motives, objects, and causes of the war.

If that be true, is it treason for a senator upon this floor to offer a resolution dealing with that question?

I quote further from Mr. Clay:

And, if a war be commenced without any previous declaration of its objects, as in the case of the existing war with Mexico, Congress must necessarily possess the authority, at any time, to declare for what purposes it shall be further prosecuted. If we suppose Congress does not possess the controlling authority attributed to it, if it be contended that a war having been once commenced, the president of the United States may direct it to the accomplishment of any object he pleases, without consulting and without any regard to the will of Congress, the convention will have utterly failed in guarding the nation against the abuses and ambition of a single individual. Either Congress or the president must have the right of determining upon the objects for which a war shall be prosecuted. There is no other alternative. If the president possess it and may prosecute it for objects against the will of Congress, where is the difference between our free government and that of any other nation which may be governed by an absolute czar, emperor, or king?

In closing his address, Mr. Clay said:

I conclude, therefore, Mr. President and fellow citizens, with entire confidence, that Congress has the right, either at the beginning or during the prosecution of any war, to decide the objects and purposes for which it was proclaimed or for which it ought to be continued. And I think it is the duty of Congress, by some deliberate and authentic act, to declare for what objects the present war shall be longer prosecuted. I suppose the president would not hesitate to regulate his conduct by the pronounced will of Congress and to employ the force and the diplomatic power of the nation to execute that will. But if the president should decline or refuse to do so and, in contempt of the supreme authority of Congress, should persevere in waging the war for other objects than those proclaimed by Congress, then it would be the imperative duty of that body to vindicate its authority by the most stringent and effectual and appropriate measures. And if, on the contrary, the enemy should refuse to conclude a treaty containing stipulations securing the objects designated by Congress, it would become the duty of the whole government to prosecute the war with all the national energy until those objects were attained by a

treaty of peace. There can be no insuperable difficulty in Congress making such an authoritative declaration. Let it resolve, simply, that the war shall or shall not be a war of conquest; and, if a war of conquest, what is to be conquered. Should a resolution pass disclaiming the design of conquest, peace would follow in less than sixty days, if the president would conform to his constitutional duty.

Mr. Clay as a part of that speech presented certain resolutions which were unanimously adopted by the meeting and which declared that the power to determine the purposes of the war rested with Congress, and then proceeded clearly to state the purposes, and the only purposes, for which the war should be prosecuted.

The last of these resolutions is so pertinent to the present discussion that I invite your attention to it at this time. It is as follows:

*Resolved*, That we invite our fellow citizens of the United States who are anxious for the restoration of the blessings of peace, or, if the existing war shall continue to be prosecuted, are desirous that its purposes and objects shall be defined and known, who are anxious to avert present and future perils and dangers, with which it may be fraught, and who are also anxious to produce contentment and satisfaction at home, and to elevate the national character abroad, to assemble together in their respective communities, and to express their views, feelings, and opinions.

Abraham Lincoln<sup>5</sup> was a member of Congress at the time of the Mexican War. He strongly opposed the war while it was in progress and severely criticized President Polk<sup>6</sup> on the floor of the House because he did not state in his message when peace might be expected.

In the course of his speech Lincoln said:

At its beginning, Gen. Scott was by this same president driven into disfavor, if not disgrace, for intimating that peace could not be conquered in less than three or four months. But now, at the end of twenty months . . . this same president gives a long message, without showing us that as to the end he himself has even an imaginary conception. As I have said, he knows not where he is. He is a bewildered, confounded, and miserably perplexed man. God grant he may be able to show there is not something about his conscience more painful than his mental perplexity.

Writing to a friend who had objected to his opposition to Polk in relation to this power of the president in war, Lincoln said:

<sup>5</sup> Lincoln served in the House of Representatives, 1847-1849.

<sup>6</sup> James K. Polk (1795-1849) served in the House of Representatives, 1825-1839, and was president of the United States, 1845-1849.

The provision of the Constitution giving the war-making power to Congress was dictated, as I understand it, by the following reasons: kings had always been involving and impoverishing their people in wars, pretending generally, if not always, that the good of the people was the object. This our convention understood to be the most oppressive of all kingly oppressions, and they resolved to so frame the Constitution that no man should hold the power of bringing this oppression upon us. But your view destroys the whole matter and places our president where kings have always stood.

I now quote from the speech of Charles Sumner,<sup>7</sup> delivered at Tremont Temple, Boston, November 5, 1846.

John A. Andrew,<sup>8</sup> who was the great war governor of Massachusetts, as I remember, presided at this public meeting, which was in support of the independent nomination of Dr. I. G. Howe as Representative in Congress. Mr. Sumner was followed by Hon. Charles Francis Adams,<sup>9</sup> who also delivered an address at this meeting.

This is the view of Mr. Sumner on the Mexican War, which was then in progress, as expressed by him on this occasion:

The Mexican War is an enormity born of slavery. . . . Base in object, atrocious in beginning, immoral in all its influences, vainly prodigal of treasure and life, it is a war of infamy, which must blot the pages of our history.

In closing his eloquent and powerful address, he said:

Even if we seem to fail in this election we shall not fail in reality. The influence of this effort will help to awaken and organize that powerful public opinion by which this war will at last be arrested. Hang out, fellow citizens, the white banner of peace; let the citizens of Boston rally about it; and may it be borne forward by an enlightened, conscientious people, aroused to condemnation of this murderous war, until Mexico, now wet with blood unjustly shed, shall repose undisturbed beneath its folds.

Contrast this position taken by Charles Sumner at Tremont Temple with that of the secretary of the treasury, Mr. McAdoo.<sup>10</sup> He is now touring the country with all the prestige of

<sup>7</sup> Charles Sumner (1811–1874) served in the Senate, 1851–1874.

<sup>8</sup> John A. Andrew (1818–1867) was governor of Massachusetts, 1860–1866.

<sup>9</sup> Charles Francis Adams (1807–1886), served in the House of Representatives, 1859–1861.

<sup>10</sup> William Gibbs McAdoo (1863–1941) was secretary of the treasury, 1913–1918. He served in the Senate, 1933–1938.

his great financial mission and the authority of his high place in the administration. I quote the language of the authorized report of his speech before the Bankers' Association of West Virginia, September 21, 1917. According to daily press reports he is making substantially the same denunciation in all his addresses:

America intends that those well-meaning but misguided people who talk inopportune of peace when there can be no peace until the cancer which has rotted civilization in Europe is extinguished and destroyed forever shall be silenced. I want to say here and now and with due deliberation that every pacifist speech in this country made at this inopportune and improper time is in effect traitorous.

In these times we had better turn the marble bust of Charles Sumner to the wall. It ill becomes those who tamely surrender the right of free speech to look upon that strong, noble, patriotic face.

Mr. President, Daniel Webster,<sup>11</sup> then in the zenith of his power, and with the experience and knowledge of his long life and great public service in many capacities, to add weight to his words, spoke at Faneuil Hall, November 6, 1846, in opposition to the Mexican War. He said:

Mr. Chairman, I wish to speak with all soberness in this respect, and I would say nothing here tonight which I would not say in my place in Congress or before the whole world. The question now is, *For what purposes and to what ends is this present war to be prosecuted?*

What will you say to the stature of the statesmanship that imputes treason to his country to a member of this body who introduces a resolution having no other import than that?

Webster saw no reason why the purposes of the war in which his country was engaged should not be discussed in Congress or out of Congress by the people's representatives or by the people themselves.

After referring to Mexico as a weak and distracted country he proceeded:

*It is time for us to know what are the objects and designs of our government.*

It is not the habit of the American people, nor natural to their character, to consider the expense of a war which they deem just and necessary.—

<sup>11</sup> Daniel Webster (1782–1852). See Speeches No. 2, 4, and 12.

Not only just, but necessary—

but it is their habit and belongs to their character to inquire into the justice and necessity of a war in which it is proposed to involve them.

Mr. Webster discussed the Mexican War at Springfield, Mass., September 29, 1847, and again, while the war was in progress, he did not hesitate to express his disapproval in plain language.

Many battles had been fought and won, and our victorious armies were in the field, on foreign soil.

Sir, free speech had not been suppressed. The right of the people to assemble and to state their grievances was still an attribute of American freedom. Mr. Webster said:

We are, in my opinion, in a most unnecessary and therefore a most unjustifiable war.

Whoever expects to whip men, free men, in this country into a position where they are to be denied the right to exercise the same freedom of speech and discussion that Webster exercised in that speech little understand the value which the average citizen of this country places upon the liberty guaranteed to him by the Constitution. Sir, until the sacrifices of every battlefield consecrated to the establishment of representative government and of constitutional freedom shall be obliterated from the pages of history and forgotten of men, the plain citizenship of this country will jealously guard that liberty and that freedom and will not surrender it.

To return to my text. Mr. Webster said:

We are, in my opinion, in a most unnecessary and therefore a most unjustifiable war. I hope we are nearing the close of it. I attend carefully and anxiously to every rumor and every breeze that brings to us any report that the effusion of blood, caused, in my judgment, by a rash and unjustifiable proceeding on the part of the government, may cease.

He makes the charge that the war was begun under false pretexts, as follows:

Now, sir, the law of nations instructs us that there are wars of pretexts. The history of the world proves that there have been, and we are not now without proof that there are, wars waged on pretexts; that is, on pretenses, where the cause assigned is not the true cause. That I believe on my conscience is the true character of the war now waged

against Mexico. I believe it to be a war of pretexts; a war in which the true motive is not distinctly avowed, but in which pretenses, afterthoughts, evasions, and other methods are employed to put a case before the community which is not the true case.

Think you Mr. Webster was not within his constitutional rights in thus criticizing the character of the war, its origin, and the reasons which were given from time to time in justification of it?

Mr. Webster discusses at length what he considers some of the false pretexts of the war. Later on he says:

Sir, men there are whom we see, and whom we hear speak of the duty of extending our free institutions over the whole world if possible. We owe it to benevolence, they think, to confer the blessings we enjoy on every other people. But while I trust that liberty and free civil institutions, as we have experienced them, may ultimately spread over the globe, I am by no means sure that all people are fit for them; nor am I desirous of imposing, or forcing, our peculiar forms upon any nation that does not wish to embrace them.

Taking up the subject that war does now exist, Mr. Webster asks:

What is our duty? I say for one, that I suppose it to be true—I hope it to be true—that a majority of the next House of Representatives will be Whigs; will be opposed to the war. I think we have heard from the East and the West, the North and the South, some things that make that pretty clear. Suppose it to be so. What then? Well, sir, I say for one, and at once, that unless the president of the United States shall make out a case which shall show to Congress that the aim and object for which the war is now prosecuted is no purpose not connected with the safety of the Union and the just rights of the American people, then Congress ought to pass resolutions against the prosecution of the war, and grant no further supplies. I would speak here with caution and all just limitation. It must be admitted to be the clear intent of the Constitution that no foreign war should exist without the assent of Congress. This was meant as a restraint on the executive power. But, if, when a war has once begun, the president may continue it as long as he pleases, free of all control of Congress, then it is clear that the war power is substantially in his own single hand. Nothing will be done by a wise Congress hastily or rashly, nothing that partakes of the nature of violence or recklessness; a high and delicate regard must, of course, be had for the honor and credit of the nation; but, after all, if the war should become odious to the people, if they shall disapprove the objects for which it appears to be prosecuted, then it will be the bounden duty of their representatives in Congress to demand of the president a full statement of his objects and purposes. And if these purposes shall appear to them not to be founded in the public good, or not consist-

ent with the honor and character of the country, then it will be their duty to put an end to it by the exercise of their constitutional authority. If this be not so, then the whole balance of the Constitution is overthrown, and all just restraint on the executive power, in a matter of the highest concern to the peace and happiness of the country, entirely destroyed. If we do not maintain this doctrine; if it is not so—if Congress, in whom the war-making power is expressly made to reside, is to have no voice in the declaration or continuance of war; if it is not to judge of the propriety of beginning or carrying it on—then we depart at once, and broadly, from the Constitution.

Mr. Webster concluded his speech in these memorable words:

We may be tossed upon an ocean where we can see no land—nor, perhaps, the sun or stars. But there is a chart and a compass for us to study, to consult, and to obey. That chart is the Constitution of the country. That compass is an honest, single-eyed purpose to preserve the institutions and the liberty with which God has blessed us.

In 1847 Senator Tom Corwin<sup>12</sup> made a memorable speech in the Senate on the Mexican War. It was one of the ablest addresses made by that very able statesman, and one of the great contributions to the discussion of the subject we are now considering. At the time of Senator Corwin's address the majority in Congress were supporting the president. The people up to that time had had no chance to express their views at an election. After referring to the doctrine then preached by the dominant faction of the Senate, that after war is declared it must be prosecuted to the bitter end as the president may direct, until one side or the other is hopelessly beaten and devastated by the conflict, with one man—the president—in sole command of the destinies of the Nation, Mr. Corwin said:

With these doctrines for our guide, I will thank any senator to furnish me with any means of escaping from the prosecution of this or any other war for an hundred years to come if it please the president who shall be, to continue it so long. Tell me, ye who contend that being in war duty demands of Congress for its prosecution all the money and every able-bodied man in America to carry it on if need be, who also contend that it is the right of the president without the control of Congress to march your embodied hosts to Monterey, to Yucatan, to Mexico, to Panama, to China, and that under penalty of death to the officer who disobeys him; tell me, I demand it of you, tell me, tell the American people, tell the nations of Christendom what is the difference between your American democracy and the most

<sup>12</sup> Thomas Corwin (1794–1865). See Speech No. 9.

odious, most hateful despotism that merciful God has ever allowed a nation to be afflicted with since government on earth began? You may call this free government, but it is such freedom, and no other as of old was established at Babylon, at Susa, at Bactriana, or Persepolis. Its parallel is scarcely to be found when thus falsely understood in any, even the worst, forms of civil polity in modern times. Sir, it is not so; such is not your Constitution; it is something else, something other and better than this.

Lincoln, Webster, Clay, Sumner—what a galaxy of names in American history! They all believed and asserted and advocated in the midst of war that it was the right—the constitutional right—and the patriotic duty of American citizens, after the declaration of war and while the war was in progress, to discuss the issues of the war and to criticize the policies employed in its prosecution and to work for the election of representatives opposed to prolonging war.

The right of Lincoln, Webster, Clay, Sumner to oppose the Mexican War, criticize its conduct, advocate its conclusion on a just basis, is exactly the same right and privilege as that possessed by every representative in Congress and by each and every American citizen in our land today in respect to the war in which we are now engaged. Their arguments as to the power of Congress to shape the war policy and their opposition to what they believed to be the usurpation of power on the part of the executive are potent so long as the Constitution remains the law of the land.

English history, like our own, shows that it has ever been the right of the citizen to criticize and, when he thought necessary, to condemn the war policy of his government.

#### DISCUSSION BY ENGLISH STATESMEN

John Bright<sup>13</sup> consistently fought the Crimean War with all the power of his great personality and noble mind; he fought it inch by inch and step by step from the floor of the English Parliament. After his death Gladstone,<sup>14</sup> although he had been a part of the ministry that Bright had opposed because of the Crimean

<sup>13</sup> John Bright (1811–1889) served in the House of Commons, 1843–1889.

<sup>14</sup> William E. Gladstone (1809–1898) was prime minister, 1868–1874, 1880–1885, 1886, and 1892–1894.

War, selected this as the theme for his eulogy of the great statesman, as best portraying his high character and great service to the English people.

Lloyd George<sup>15</sup> aggressively opposed the Boer War. Speaking in the House of Commons July 25, 1900, in reply to the prime minister, he said:

He has led us into two blunders. The first was the war. But worse than the war is the change that has been effected in the purpose for which we are prosecuting the war. We went into the war for equal rights; we are prosecuting it for annexation. . . . You entered into these two Republics for philanthropic purposes and remained to commit burglary. . . . A war of annexation, however, against a proud people must be a war of extermination, and that is, unfortunately, what it seems we are now committing ourselves to—burning homesteads and turning men and women out of their homes.

I am citing this language, Mr. President, as showing the length to which statesmen have gone in opposing wars which have been conducted by their governments and the latitude that has been accorded them.

. . . The right honorable gentleman has made up his mind that this war shall produce electioneering capital to his own side. He is in a great hurry to go to the country before the facts are known. He wants to have the judgment of the people in the very height and excitement of the fever. He wants a verdict before the pleadings are closed and before "discovery" has been obtained. He does not want the documents to come, but he wants to have the judgment of the country upon censored news, suppressed dispatches, and unpaid bills.

In a speech delivered October 23, 1901, Lloyd George charged that the English Army had burned villages, blown up farmhouses, swept away the cattle, burned thousands of tons of grain, destroyed all agricultural implements, all the mills, the irrigation works, and left the territory "a blackened devastated wilderness." He said:

In June the death rate among the children in the Orange River Colony camps was at the rate of 192 per thousand per annum, and in Transvaal 233 per thousand per annum. In July the figures were 220 and 336 per thousand per annum, respectively. In August they had risen to 250 and 468, and in September to 442 in Orange River Colony and to 457 in the Transvaal. These are truly appalling figures. It

<sup>15</sup> David Lloyd George (1863-1945) was prime minister, 1916-1922.

means that at that rate in two years' time there would not be a little child left in the whole of these two new territories. The worst of it is that I can not resist the conclusion that their lives could have been saved had it not been that these camps had been deliberately chosen for military purposes. In the few camps near the coast there is hardly any mortality at all—

Observe that here is a criticism of the military policies of his government—

and if the children had been removed from the Orange River Colony and the Transvaal to the seacoasts, where they could have been easily fed and clothed and cared for, their lives might be saved; but as long as they were kept up in the north there was a terrible inducement offered to the Boer commanders not to attack the lines of communication. . . . If I were to despair for the future of this country it would not be because of trade competition from either America or Germany, or the ineffectiveness of its army, or anything that might happen to its ships; but rather because it used its great, hulking strength to torture a little child. Had it not been that his ministry had shown distinct symptoms of softening of the brain, I would call the torpor and indifference they are showing in face of all this, criminal. It is a maddening horror, and it will haunt the Empire to its dying hour. What wonder is it that Europe should mock and hiss at us? Let any honest Britisher fearlessly search his heart and answer this question: Is there any ground for the reproach flung at us by the civilized world that, having failed to crush the men, we have now taken to killing babes?

Mr. President, while we were struggling for our independence the Duke of Grafton,<sup>16</sup> in the House of Lords, October 26, 1775, speaking against voting thanks to British officers and soldiers, after the battles of Lexington and Bunker Hill, declared:

I pledge myself to your lordships and my country that if necessity should require it and my health otherwise permit it, I mean to come down to this House in a litter in order to express my full and hearty disapproval of the measures now pursued, and, as I understand from the noble lords in office, meant to be pursued.

On the same occasion, Mr. Fox<sup>17</sup> said:

I could not consent to the bloody consequences of so silly a contest, about so silly an object, conducted in the silliest manner that history or observation had ever furnished an instance of, and from which we are likely to derive poverty, misery, disgrace, defeat, and ruin.

<sup>16</sup> Augustus Henry Fitzroy (1735-1811), 3d duke of Grafton, had served as prime minister, 1768-1770.

<sup>17</sup> Charles James Fox (1749-1806).

In the House of Commons, May 14, 1777, Mr. Burke<sup>18</sup> is reported in the parliamentary debates against the war on the American colonies, as saying he was, and ever would be, ready to support a just war, whether against subjects or alien enemies, but where justice or color of justice was wanting he would ever be the first to oppose it.

Lord Chatham,<sup>19</sup> November 18, 1777, spoke as follows regarding the war between England and the American colonies:

I would sell my shirt off my back to assist in proper measures, properly and wisely conducted, but I would not part with a single shilling to the present ministers. Their plans are founded in destruction and disgrace. It is, my lords, a ruinous and destructive war; it is full of danger: it teems with disgrace and must end in ruin. . . . If I were an American, as I am an Englishman, while a foreign troop was landed in my country I never would lay down my arms! Never! Never! Never!

Mr. President, I have made these quotations from some of the leading statesmen of England to show that the principle of free speech was no new doctrine born of the Constitution of the United States. Our Constitution merely declared the principle. It did not create it. It is a heritage of English-speaking peoples, which has been won by incalculable sacrifice, and which they must preserve so long as they hope to live as free men. I say without fear of contradiction that there has never been a time for more than a century and a half when the right of free speech and free press and the right of the people to peaceably assemble for public discussion have been so violated among English-speaking people as they are violated today throughout the United States. Today, in the land we have been wont to call the free United States, governors, mayors, and policemen are preventing or breaking up peaceable meetings called to discuss the questions growing out of this war, and judges and courts with some notable and worthy exceptions, are failing to protect the citizens in their rights.

It is no answer to say that when the war is over the citizen may once more resume his

<sup>18</sup> Edmund Burke (1729-1797).

<sup>19</sup> William Pitt (1708-1778), 1st earl of Chatham, known as the "Elder Pitt."

rights and feel some security in his liberty and his person. As I have already tried to point out, now is precisely the time when the country needs the counsel of all its citizens. In time of war even more than in time of peace, whether citizens happen to agree with the ruling administration or not, these precious fundamental personal rights—free speech, free press, and right of assemblage so explicitly and emphatically guaranteed by the Constitution should be maintained inviolable. There is no rebellion in the land, no martial law, no courts are closed, no legal processes suspended, and there is no threat even of invasion.

But more than this, if every preparation for war can be made the excuse for destroying free speech and a free press and the right of the people to assemble together for peaceful discussion, then we may well despair of ever again finding ourselves for a long period in a state of peace. With the possessions we already have in remote parts of the world, with the obligations we seem almost certain to assume as a result of the present war, a war can be made any time overnight and the destruction of personal rights now occurring will be pointed to then as precedents for a still further invasion of the rights of the citizen. This is the road which all free governments have heretofore traveled to their destruction, and how far we have progressed along it is shown when we compare the standard of liberty of Lincoln, Clay, and Webster with the standard of the present day.

This leads me, Mr. President, to the next thought to which I desire to invite the attention of the Senate, and that is the power of Congress to declare the purpose and objects of the war, and the failure of Congress to exercise that power in the present crisis.

#### POWER OF CONGRESS TO DECLARE OBJECTS OF WAR

For the mere assertion of that right, in the form of a resolution to be considered and discussed—which I introduced August 11, 1917—I have been denounced throughout this broad land as a traitor to my country.

Mr. President, we are in a war the awful consequences of which no man can foresee, which, in my judgment, could have been avoided if the

Congress had exercised its constitutional power to influence and direct the foreign policy of this country.

On the 8th day of February, 1915, I introduced in the Senate a resolution authorizing the president to invite the representatives of the neutral nations of the world to assemble and consider, among other things, whether it would not be possible to lay out lanes of travel upon the high seas and through proper negotiation with the belligerent powers have those lanes recognized as neutral territory, through which the commerce of neutral nations might pass. This, together with other provisions, constituted a resolution, as I shall always regard it, of most vital and supreme importance in the world crisis, and one that should have been considered and acted upon by Congress.

I believe, sir, that had some such action been taken the history of the world would not be written at this hour in the blood of more than one-half of the nations of the earth, with the remaining nations in danger of becoming involved.

I believe that had Congress exercised the power in this respect, which I contend it possesses, we could and probably would have avoided the present war.

Mr. President, I believe that if we are to extricate ourselves from this war and restore this country to an honorable and lasting peace, the Congress must exercise in full the war powers intrusted to it by the Constitution. I have already called your attention sufficiently, no doubt, to the opinions upon this subject expressed by some of the greatest lawyers and statesmen of the country, and I now venture to ask your attention to a little closer examination of the subject viewed in the light of distinctly legal authorities and principles.

#### CONSTITUTIONAL PROVISIONS INVOLVED

Section 8, Article I, of the Constitution provides:

The Congress shall have power to lay and collect taxes, duties, imposts, and excise to pay the debts and provide for the common defense and general welfare of the United States.

In this first sentence we find that no war can be prosecuted without the consent of the Congress. No war can be prosecuted without money. There is no power to raise the money for war except the power of Congress. From this provision alone it must follow absolutely and without qualification that the duty of determining whether a war shall be prosecuted or not, whether the people's money shall be expended for the purpose of war or not rests upon the Congress, and with that power goes necessarily the power to determine the purposes of the war, for if the Congress does not approve the purposes of the war, it may refuse to lay the tax upon the people to prosecute it.

Again, section 8 further provides that Congress shall have power—

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a Navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrection, and repel invasion;

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States, respectively, the appointment of the officers and the authority of training the militia according to the discipline prescribed by Congress.

In the foregoing grants of power, which are as complete as language can make them, there is no mention of the president. Nothing is omitted from the powers conferred upon the Congress. Even the power to make the rules for the government and the regulation of all the national forces, both on land and on the sea, is vested in the Congress.

Then, not content with this, to make certain that no question could possibly arise, the framers of the Constitution declared that 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 in any department or officer thereof.

We all know from the debates which took place in the constitutional convention why it was that the Constitution was so framed as to vest in the Congress the entire war-making power. The framers of the Constitution knew that to give to one man that power meant danger to the rights and liberties of the people. They knew that it mattered not whether you call the man king or emperor, czar or president, to put into his hands the power of making war or peace meant despotism. It meant that the people would be called upon to wage wars in which they had no interest or to which they might even be opposed. It meant secret diplomacy and secret treaties. It meant that in those things, most vital to the lives and welfare of the people, they would have nothing to say. The framers of the Constitution believed that they had guarded against this in the language I have quoted. They placed the entire control of this subject in the hands of the Congress. And it was assumed that debate would be free and open, that many men representing all the sections of the country would freely, frankly, and calmly exchange their views, unafraid of the power of the executive, uninfluenced by anything except their own convictions, and a desire to obey the will of the people expressed in a constitutional manner.

Another reason for giving this power to the Congress was that the Congress, particularly the House of Representatives, was assumed to be directly responsible to the people and would most nearly represent their views. The term of office for a representative was fixed at only two years. One-third of the Senate would be elected each two years. It was believed that this close relation to the people would insure a fair representation of the popular will in the action which the Congress might take. Moreover, if the Congress for any reason was unfaithful to its trust and declared a war which the people did not desire to support or to continue, they could in two years at most retire from office their unfaithful representatives and return others who would terminate the war. It is true that within two years much harm could be done by an unwise declaration of war, especially a war of aggression, where men were sent abroad. The framers of the Constitution made

no provision for such a condition, for they apparently never contemplated that such a condition would arise.

Moreover, under the system of voluntary enlistment, which was the only system of raising an army for use outside the country of which the framers of the Constitution had any idea, the people could force a settlement of any war to which they were opposed by the simple means of not volunteering to fight it.

The only power relating to war with which the executive was intrusted was that of acting as commander in chief of the army and navy and of the militia when called into actual service. This provision is found in section 2 of Article II, and is as follows:

*The President shall be Commander in Chief of the Army and Navy of the United States and of the militia of the several States when called into the actual service of the United States.*

Here is found the sum total of the president's war powers. After the army is raised he becomes the general in command. His function is purely military. He is the general in command of the entire army, just as there is a general in command of a certain field of operation. The authority of each is confined strictly to the field of military service. The Congress must raise and support and equip and maintain the army which the president is to command. Until the army is raised the president has no military authority over any of the persons that may compose it. He cannot enlist a man, or provide a uniform, or a single gun, or pound of powder. The country may be invaded from all sides and except for the command of the regular army, the president, as commander in chief of the army, is as powerless as any citizen to stem the tide of the invasion. In such case his only resort would be to the militia, as provided in the Constitution. Thus completely did the fathers of the Constitution strip the executive of military power.

It may be said that the duty of the president to enforce the laws of the country carries with it by implication control over the military forces for that purpose, and that the decision as to when the laws are violated, and the manner in which they should be redressed rests with

the president. This whole matter was considered in the famous case of *Ex parte Milligan*<sup>20</sup> (4 Wall., 2). The question of enforcing the laws of the United States, however, does not arise in the present discussion. *The laws of the United States have no effect outside the territory of the United States.* Our army in France or our navy on the high seas may be engaged in worthy enterprises, but they are not enforcing the laws of the United States, and the president derives from his constitutional obligation to enforce the laws of the country no power to determine the purposes of the present war.

The only remaining provision of the Constitution to be considered on the subject is that provision of Article II, section 2, which provides that the president—

Shall have power by and with the consent of the Senate to make treaties, *providing two-thirds of the Senate present concur.*

This is the same section of the Constitution which provides that the president "shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers, consuls, judges of the Supreme Court," and so forth.

Observe, the president under this constitutional provision gets no authority to declare the purposes and objects of any war in which the country may be engaged. It is true that a treaty of peace cannot be executed except the president and the Senate concur in its execution. If a president should refuse to agree to terms of peace which were proposed, for instance, by a resolution of Congress, and accepted by the parliament of an enemy nation against the will, we will say, of an emperor, the war would simply stop, if the two parliaments agreed and exercised their powers respectively to withhold supplies; and the formal execution of a treaty of peace would be postponed until the people could select another president. It is devoutly to be hoped that such a situation will never arise, and it is hardly conceivable that it should arise with both an executive and a Senate anxious, respectively, to discharge the constitutional

duties of their office. But if it should arise, under the Constitution, the final authority and the power to ultimately control is vested by the Constitution in the Congress. The president can no more make a treaty of peace without the approval not only of the Senate but of two-thirds of the senators present than he can appoint a judge of the Supreme Court without the concurrence of the Senate. A decent regard for the duties of the president, as well as the duties of the senators, and the consideration of the interests of the people, whose servants both the senators and the president are, requires that the negotiations which lead up to the making of peace should be participated in equally by the senators and by the president. For senators to take any other position is to shirk a plain duty; is to avoid an obligation imposed upon them by the spirit and letter of the Constitution and by the solemn oath of office each has taken.

#### PRECEDENTS AND AUTHORITIES

As might be expected from the plain language of the Constitution, the precedents and authorities are all one way. I shall not attempt to present them all here, but only refer to those which have peculiar application to the present situation.

Watson,<sup>21</sup> in his work on the Constitution, Volume II, page 915, says:

The authority of the President over the Army and Navy to command and control is only subject to the restrictions of Congress to make rules for the government and regulation of the land and naval forces. . . . Neither can impair or invade the authority of the other. . . . The powers of the President (under the war clause) are only those which may be called "military."

The same author on the same and succeeding page points out that the president as commander in chief of the army may direct the military force in such a way as to most effectively injure the enemy. He may even direct an invasion of enemy territory. But, says the author, this can be done "temporarily, however, only until Con-

<sup>20</sup> In *Ex parte Milligan* (1866) the Supreme Court ruled that President Lincoln had illegally tried civilians before courts-martial in areas where the war was not actually being fought and the civil courts were still functioning.

<sup>21</sup> David K. Watson, *The Constitution of the United States, Its History Application and Construction*, 2 vol. (Chicago, 1910).

gress has defined what the permanent policy of the country is to be."

How, then, can the president declare the purposes of the war to be, to extend permanently the territory of an ally or secure for an ally damages either in the form of money or new territory?

Mr. KING.<sup>22</sup> Mr. President, will the senator yield for a question?

Mr. LA FOLLETTE. I prefer not to yield, if the senator will permit me to continue. I can hardly get through within the time allotted, and I am certain to be diverted if I begin to yield.

Mr. KING. I just wanted to ask the senator whether he thinks the president of the United States has contravened any constitutional powers conferred upon him thus far in the prosecution of the war?

Mr. LA FOLLETTE. Well, sir, I am discussing the constitutional question here, and senators must make their own application.

Pomeroy,<sup>23</sup> in his *Introduction to the Constitutional Law of the United States* (9th edition, 1886, p. 373), says:

The organic law nowhere prescribes or limits the causes for which hostilities may be waged against a foreign country. *The causes of war it leaves to the discretion and judgment of the legislature.*

In other words, it is for Congress to determine what we are fighting for. The president, as commander in chief of the army, is to determine the best method of carrying on the fight. But since the purposes of the war must determine what are the best methods of conducting it, the primary duty at all times rests upon Congress to declare either in the declaration of war or subsequently what the objects are which it is expected to accomplish by the war.

In Elliot's *Debates*<sup>24</sup> (supplement 2d edition, 1866, p. 439, vol. 5), it is said:

<sup>22</sup> William H. King of Utah (1863-1949) served in the Senate, 1917-1941.

<sup>23</sup> John N. Pomeroy. The first edition of this work was published in 1868.

<sup>24</sup> Jonathan Elliot, ed., *The Debates in the Several State Conventions, on the Adoption of the Federal Constitution*, 1st ed., 5 vol. (Washington, DC, 1836-1845).

There is a material difference between the cases of making *war* and making *peace*. It should be more easy to get out of war than into it.

In the same volume, at page 140, we find:

Mr. Sherman said he considered the executive magistracy as nothing more than an institution for carrying the will of the legislature into effect.

Story,<sup>25</sup> in his work on the Constitution (5th edition, 1891, p. 92), says:

The history of republics has but too fatally proved that they are too ambitious of military fame and conquest and too easily devoted to the interests of demagogues, who flatter their pride and *betray their interests*. It should, therefore, be difficult in a republic to *declare war, but not to make peace*. The representatives of the people are to lay the taxes to support a war, and therefore have a right to be consulted as to its propriety and necessity.

I commend this language to those gentlemen, both in and out of public office, who condemn as treasonable all efforts, either by the people or by their representatives in Congress, to discuss terms of peace or who even venture to suggest that a peace is not desirable until such time as the president, acting solely on his own responsibility, shall declare for peace. It is a strange doctrine we hear these days that the mass of the people, who pay in money, misery, and blood all the costs of this war, out of which a favored few profit so largely, may not freely and publicly discuss terms of peace. I believe that I have shown that such an odious and tyrannical doctrine has never been held by the men who have stood for liberty and representative government in this country.

Ordranax,<sup>26</sup> in his work on Constitutional Legislation, says:

This power (the war-making power) the Constitution has lodged in Congress, as the political department of the Government, and more immediate representative of the will of the people. (P. 495).

On page 496, the same author points out that—

<sup>25</sup> Joseph Story, *Commentaries on the Constitution of the United States*, first published in 1833.

<sup>26</sup> John Ordranax, *Constitutional Legislation in the United States* (Philadelphia, 1891).

The general power to declare war, and the consequent right to conduct it as long as the public interests may seem to require—

is vested in Congress.

The right to determine when and upon what terms the public interests require that war shall cease must therefore necessarily vest in Congress.

I have already referred to the fact that Lincoln, Webster, Clay, Sumner, Corwin, and others, all contended and declared in the midst of war that it was the right—the constitutional right—and the patriotic duty of American citizens, after the declaration of war, as well as before the declaration of war, and while the war was in progress, to discuss the issues of the war, to criticize the policies employed in its prosecution, and to work for the election of representatives pledged to carry out the will of the people respecting the war.

Let me call your attention to what James Madison, who became the fourth president of the United States, said on the subject in a speech at the Constitutional Convention, June 29, 1787:

A standing military force, with an overgrown Executive, will not long be safe companions to liberty. The means of defense against foreign dangers have always been the instrument of tyranny at home. Among the Romans it was a standing maxim to excite war whenever a revolt was apprehended. Throughout all Europe the armies kept up under the pretense of defending have enslaved the people. It is perhaps questionable whether the best concerted system of absolute power in Europe could maintain itself in a situation where no alarms of external danger could tame the people to the domestic yoke.

I now invite your attention to some of the precedents established by Congress showing that it has exercised almost from the time of the first Congress substantially the powers I am urging it should assert now.

#### CONGRESSIONAL PRECEDENTS

Many of the precedents to which I shall now briefly refer will be found in *Hinds' Precedents*,<sup>27</sup> volume 2, chapter 49. My authority for the others are the records of Congress itself as con-

<sup>27</sup> Asher C. Hinds, *Hinds' Precedents of the House of Representatives of the United States, including references to provisions of the Constitution, the laws, and decisions of the United States Senate*, 5 vols. (Washington, DC, 1907).

tained in the *Congressional Globe* and *Congressional Record*.

In 1811 the House originated and the Senate agreed to a resolution as follows:

Taking into view the present state of the world, the peculiar situation of Spain and of her American Provinces, and the intimate relations of the territory eastward of the River Perdido, adjoining the United States, to their security and tranquility: Therefore

*Resolved, etc.*, That the United States can not see with indifference any part of the Spanish Provinces adjoining the said States eastward of the River Perdido pass from the hands of Spain into those of any other foreign power.

In 1821 Mr. Clay introduced the following resolution, which passed the House:

*Resolved*, That the House of Representatives participates with the people of the United States in the deep interest which they feel for the success of the Spanish Provinces of South America, which are struggling to establish their liberty and independence, and that it will give its constitutional support to the President of the United States whenever he may deem it expedient to recognize the sovereignty and independence of any of the said Provinces.

In 1825 there was a long debate in the House relating to an unconditional appropriation for the expenses of the ministers to the Panama Congress. According to Mr. Hinds' summary of this debate, the opposition to the amendment, led by Mr. Webster, was that—

While the House had an undoubted right to express its general opinion in regard to questions of foreign policy, in this case it was proposed to decide what should be discussed by the particular ministers already appointed. If such instructions might be furnished by the House in this case they might be furnished in all, thus usurping the power of the Executive.

James Buchanan<sup>28</sup> and John Forsyth,<sup>29</sup> who argued in favor of the amendment, "contended that it did not amount to an instruction to diplomatic agents, but was a proper expression of opinion by the House. The House has always exercised the right of expressing its opinion on great questions, either foreign or domestic, and such expressions were never thought to be an improper interference with the Executive."

<sup>28</sup> James Buchanan of Pennsylvania (1791–1868) served in the House of Representatives, 1821–1831, and in the Senate, 1834–1845. He was president of the United States, 1857–1861.

<sup>29</sup> John Forsyth of Georgia (1780–1841) served in the House of Representatives, 1813–1818 and 1823–1827, and in the Senate, 1818–1819 and 1829–1834.

In April, 1864, the House originated and passed a resolution declaring that—

It did not accord with the policy of the United States to acknowledge a monarchical government erected on the ruins of any republican government in America under the auspices of any European power.

On May 23 the House passed a resolution requesting the president to communicate any explanation given by the government of the United States to France respecting the sense and bearing of the joint resolution relative to Mexico.

The president transmitted the correspondence to the House.

The correspondence disclosed that Secretary Seward<sup>30</sup> had transmitted a copy of the resolution to our minister to France, with the explanation that—

This is a practical and purely executive question, and the decision of its constitutionality belongs not to the House of Representatives or even to Congress but to the President of the United States.

After a protracted struggle, evidently accompanied with much feeling, the House of Representatives adopted the following resolution, which had been reported by Mr. Henry Winter Davis<sup>31</sup> from the Committee on Foreign Affairs:

*Resolved*, That Congress has a constitutional right to an authoritative voice in declaring and prescribing the foreign policy of the United States as well in the recognition of new powers as in other matters, and it is the constitutional duty of the president to respect that policy no less in diplomatic negotiations than in the use of the national force when authorized by law.

It will be observed from the language last read that it was assumed as a matter of course that Congress had an authoritative voice as to the use of the national forces to be made in time of war, and that it was the constitutional duty of the president to respect the policy of the Congress in that regard, and Mr. Davis in the resolution just read argued that it was the duty of the president to respect the authority of

<sup>30</sup> William H. Seward of New York (1801-1872) served in the Senate, 1849-1861 and as secretary of state, 1861-1869. See Speech No. 13.

<sup>31</sup> Henry Winter Davis of Maryland (1817-1865) served in the House of Representatives, 1855-1861 and 1863-1865.

Congress in diplomatic negotiations even as he must respect it when the Congress determined the policy of the government in the use of the national forces. The portion of the resolution I have just read was adopted by a vote of 119 to 8. The balance of the resolution was adopted by a smaller majority, and was as follows:

And the propriety of any declaration of foreign policy by Congress is sufficiently proved by the vote which pronounces it, and such proposition, while pending and undetermined is not a fit topic of diplomatic explanation with any foreign power.

The joint resolution of 1898 declaring the intervention of the United States to remedy conditions existing in the island of Cuba is recent history and familiar to all. This resolution embodied a clear declaration of foreign policy regarding Cuba as well as a declaration of war. It passed both branches of Congress and was signed by the president.

After reading the abhorrent conditions existing in Cuba it reads as follows:

*Resolved, etc.*, First. That the people of the island of Cuba are, and of right ought to be, free and independent.

Second. That it is the duty of the United States to demand, and the government of the United States does hereby demand, that the government of Spain at once relinquish its authority and government in the island of Cuba and withdraw its land and naval forces from Cuba and Cuban waters.

Third. That the president of the United States be, and he hereby is, directed and empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several states, to such extent as may be necessary to carry these resolutions into effect.

Fourth. That the United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction, or control over said island except for the pacification thereof, and asserts its determination, when that is accomplished, to leave the government and control of the island to its people.

On April 28, 1904, a joint resolution was passed by both houses of Congress in the following terms:

That it is the sense of the Congress of the United States that it is desirable in the interests of uniformity of action by maritime states in time of war, that the president endeavor to bring about an understanding among the principal maritime powers, with a view to incorporating into the permanent law of civilized nations the principle of the exemption of all private property at sea, not contraband of war, from capture or destruction by belligerents.

Here it will be observed that the Congress proposed by resolution to direct the president as to the policy of exempting from capture private property at sea, not contraband of war, in not only one war merely but in all wars, providing that other maritime powers could be brought to adopt the same policy. So far as I am aware, there is an unbroken line of precedents by Congress upon this subject down to the time of the present administration. It is true that in 1846 President Polk, without consulting Congress, assumed to send the army of the United States into territory the title of which was in dispute between the United States and Mexico, thereby precipitating bloodshed and the Mexican War. But it is also true that this act was condemned as unconstitutional by the great constitutional lawyers of the country, and Abraham Lincoln, when he became a member of the next Congress, voted for and supported the resolution, called the Ashmun amendment, which passed the House of Representatives, declaring that the Mexican War had been—

Unnecessarily and unconstitutionally begun by the President of the United States. (See Schouler's *History of the United States*,<sup>32</sup> vol. 5, p. 83. See also Lincoln's speech in the House of Representatives, Jan. 12, 1848.)

That the full significance of this resolution was appreciated by the House of Representatives is shown by the speech of Mr. Venable,<sup>33</sup> representative from North Carolina, and a warm supporter of President Polk, made in the House, January 12, 1848, where referring to this resolution he says:

Eighty-five members of this House sustained that amendment (referring to the Ashmun amendment) and it now constitutes one of our recorded acts. I will not here stop to inquire as to the moral effect upon the Mexican people and the Mexican Government which will result to us from such a vote in the midst of a war. I suppose gentlemen have fully weighed this matter. Neither will I now inquire how much such a vote will strengthen our credit or facilitate the government in furnishing the necessary supply of troops. . . .

They [referring to his fellow members in the House of Representatives] have said by their votes that the president

has violated the Constitution in the most flagrant manner; that every drop of blood which has been shed, every bone which now whitens the plains of Mexico, every heart-wringing agony which has been produced must be placed to his account who has so flagitiously violated the Constitution and involved the nation in the horrors of war. This the majority of this House have declared on oath. The grand inquest of the nation have asserted the fact and fixed it on their records, and I here demand of them to impeach the president.

That Mr. Lincoln was in no manner deterred from the discharge of his duty as he saw it is evidenced by the fact that on the day following the speech of Representative Venable, Lincoln replied with one of the ablest speeches of his career, the opening sentences of which I desire to quote. He said:

Some, if not all, the gentlemen of the other side of the House, who have addressed the committee within the last two days, have spoken rather complainingly, if I have rightly understood them, of the vote given a week or ten days ago, declaring that the war with Mexico was unnecessarily and unconstitutionally commenced by the President. I admit that such a vote should not be given in mere party wantonness and that the one given is justly censurable, if it have no other or better foundation. I am one of those who joined in that vote; and I did so under my best impression of the truth of the case.

Lincoln then proceeded to demonstrate the truth of the charge as he regarded it. Evidently he did not think that patriotism in war more than in peace required the suppression of the truth respecting anything pertaining to the conduct of the war.

And yet today, Mr. President, for merely suggesting a possible disagreement with the administration on any measure submitted, or the offering of amendments to increase the tax upon incomes, or on war profits, is "treason to our country and an effort to serve the enemy."

Since the Constitution vests in Congress the supreme power to determine when and for what purpose the country will engage in war and the objects to attain which the war will be prosecuted, it seems to me to be an evasion of a solemn duty on the part of the Congress not to exercise that power at this critical time in the nation's affairs. The Congress can no more avoid its responsibility in this matter than it can in any other. As the nation's purposes in conducting this war are of supreme importance

<sup>32</sup> James Schouler, *History of the United States of America, Under the Constitution*, 7 vols. (Washington, DC, 1886-1913).

<sup>33</sup> Abraham W. Venable (1799-1876) served in the House of Representatives, 1847-1853.

to the country, it is the supreme duty of Congress to exercise the function conferred upon it by the Constitution of guiding the foreign policy of the nation in the present crisis.

A minor duty may be evaded by Congress, a minor responsibility avoided without disaster resulting, but on this momentous question there can be no evasion, no shirking of duty of the Congress, without subverting our form of government. If our Constitution is to be changed so as to give the president the power to determine the purposes for which this Nation will engage in war, and the conditions on which it will make peace, then let that change be made deliberately by an amendment to the Constitution proposed and adopted in a constitutional manner. It would be bad enough if the Constitution clothed the president with any such power, but to exercise such power without constitutional authority can not long be tolerated if even the forms of free government are to remain. We all know that no amendment to the Constitution giving the president the powers suggested would be adopted by the people. We know that if such an amendment were to be proposed it would be overwhelmingly defeated.

The universal conviction of those who yet believe in the rights of the people is that the first step toward the prevention of war and the establishment of peace, permanent peace, is to give the people who must bear the brunt of war's awful burden more to say about it. The masses will understand that it was the evil of a one-man power exercised in a half dozen nations through the malevolent influences of a system of secret diplomacy that plunged the helpless peoples of Europe into the awful war that has been raging with increasing horror and fury ever since it began and that now threatens to engulf the world before it stops.

No conviction is stronger with the people today than that there should be no future wars except in case of actual invasion, unless supported by a referendum, a plebiscite, a vote of ratification upon the declaration of war before it shall become effective.

And because there is no clearness of understanding, no unity of opinion in this country on the part of the people as to the conditions upon which we are prosecuting this war or what the

specific objects are upon the attainment of which the present administration would be willing to conclude a peace, it becomes still more imperative each day that Congress should assert its constitutional power to define and declare the objects of this war which will afford the basis for a conference and for the establishment of permanent peace. The president has asked the German people to speak for themselves on this great world issue; why should not the American people voice their convictions through their chosen representatives in Congress?

Ever since new Russia appeared upon the map she has been holding out her hands to free America to come to her support in declaring for a clear understanding of the objects to be attained to secure peace. Shall we let this most remarkable revolution the world has ever witnessed appeal to us in vain?

We have been six months at war. We have incurred financial obligations and made expenditures of money in amounts already so large that the human mind cannot comprehend them. The government has drafted from the peaceful occupations of civil life a million of our finest young men—and more will be taken if necessary—to be transported four thousand miles over the sea, with their equipment and supplies, to the trenches of Europe.

The first chill winds of autumn remind us that another winter is at hand. The imagination is paralyzed at the thought of the human misery, the indescribable suffering, which the winter months, with their cold and sleet and ice and snow, must bring to the war-swept lands, not alone to the soldiers at the front but to the noncombatants at home.

To such excesses of cruelty has this war descended that each nation is now, as a part of its strategy, planning to starve the women and children of the enemy countries. Each warring nation is carrying out the unspeakable plan of starving noncombatants. Each nurses the hope that it may break the spirit of the men of the enemy country at the front by starving the wives and babes at home, and woe be it that we have become partners in this awful business and are even cutting off food shipments from neutral countries in order to force them to help

starve women and children of the country against whom we have declared war.

There may be some necessity overpowering enough to justify these things, but the people of America should demand to know what results are expected to satisfy the sacrifice of all that civilization holds dear upon the bloody altar of a conflict which employs such desperate methods of warfare.

The question is, are we to sacrifice millions of our young men—the very promise of the land—and spend billions and more billions, and pile up the cost of living until we starve—and for what? Shall the fearfully overburdened people of this country continue to bear the brunt of a prolonged war for any objects not openly stated and defined?

The answer, sir, rests in my judgment, with the Congress, whose duty it is to declare our specific purposes in the present war and to state the objects upon the attainment of which we will make peace.

#### CAMPAIGN SHOULD BE MADE ON CONSTITUTIONAL LINES

And, sir, this is the ground on which I stand. I maintain that Congress has the right and the duty to declare the objects of the war and the people have the right and the obligation to discuss it.

American citizens may hold all shades of opinion as to the war; one citizen may glory in it, another may deplore it, each has the same right to voice his judgment. An American citizen may think and say that we are not justified in prosecuting this war for the purpose of dictating the form of government which shall be maintained by our enemy or our ally, and not be subject to punishment at law. He may pray aloud that our boys shall not be sent to fight and die on European battlefields for the annexation of territory or the maintenance of trade agreements and be within his legal rights. He may express the hope that an early peace may be secured on the terms set forth by the new Russia and by President Wilson in his speech of January 22, 1917, and he cannot lawfully be sent to jail for the expression of his convictions.

It is the citizen's duty to obey the law until it is repealed or declared unconstitutional. But he has the inalienable right to fight what he deems

an obnoxious law or a wrong policy in the courts and at the ballot box.

It is the suppressed emotion of the masses that breeds revolution.

If the American people are to carry on this great war, if public opinion is to be enlightened and intelligent, there must be free discussion.

Congress, as well as the people of the United States, entered the war in great confusion of mind and under feverish excitement. The president's leadership was followed in the faith that he had some big, unrevealed plan by which peace that would exalt him before all the world would soon be achieved.

Gradually, reluctantly, Congress and the country are beginning to perceive that we are in this terrific world conflict, not only to *right* our wrongs, not only to *aid* the allies, not only to *share* its awful death toll and its fearful tax burden, but, perhaps, to *bear the brunt* of the war.

And so I say, if we are to forestall the danger of being drawn into years of war, perhaps finally to maintain imperialism and exploitation, the people must unite in a campaign along constitutional lines for free discussion of the policy of the war and its conclusion on a just basis.

Permit me, sir, this word in conclusion. It is said by many persons for whose opinions I have profound respect and whose motives I know to be sincere that "we are in this war and must go through to the end." That is true. But it is not true that we must go through to the end to *accomplish an undisclosed purpose, or to reach an unknown goal.*

I believe that whatever there is of honest difference of opinion concerning this war, arises precisely at this point.

There is, and of course can be, no real difference of opinion concerning the duty of the citizen to discharge to the last limit whatever obligation the war lays upon him.

Our young men are being taken by the hundreds of thousands for the purpose of waging this war on the Continent of Europe, possibly Asia or Africa, or anywhere else that they may be ordered. Nothing must be left undone for their protection. They must have the best army, ammunition, and equipment that money can buy. They must have the best training and the best officers which this great country can pro-

vide. The dependents and relatives they leave at home must be provided for, not meagerly, but generously so far as money can provide for them.

I have done some of the hardest work of my life during the last few weeks on the revenue bill to raise the largest possible amount of money from surplus incomes and war profits for this war and upon other measures to provide for the protection of the soldiers and their families. That I was not able to accomplish more along this line is a great disappointment to me. I did all that I could, and I shall continue to fight with all the power at my command until wealth is made to bear more of the burden of this war than has been laid upon it by the present Congress. Concerning these matters there can be no difference of opinion. We have not yet been able to muster the forces to conscript wealth, as we have conscripted men, but no one has ever been able to advance even a plausible argument for not doing so.

No, Mr. President; it is on the other point suggested where honest differences of opinion may arise. Shall we ask the people of this country to shut their eyes and take the entire war program on faith? There are no doubt many honest and well-meaning persons who are willing to answer that question in the affirmative rather than risk the dissensions which they fear may follow a free discussion of the issues of this war. With that position I do not—I cannot agree. Have the people no intelligent contribution to make to the solution of the problems of this war? I believe that they have, and that in this matter, as in so many others, they may be wiser than their leaders, and that if left free to discuss the issues of the war they will find the correct settlement of these issues.

But it is said that Germany will fight with greater determination if her people believe that we are not in perfect agreement. Mr. President, that is the same worn-out pretext which has been used for three years to keep the plain people of Europe engaged in killing each other in this war. And, sir, as applied to this country,

at least, it is a pretext with nothing to support it.

The way to paralyze the German arm, to weaken the German military force, in my opinion, is to declare our objects in this war, and show by that declaration to the German people that we are not seeking to dictate a form of government to Germany or to render more secure England's domination of the seas.

A declaration of our purposes in this war, so far from strengthening our enemy, I believe would immeasurably weaken her, for it would no longer be possible to misrepresent our purposes to the German people. Such a course on our part, so far from endangering the life of a single one of our boys, I believe would result in saving the lives of hundreds of thousands of them by bringing about an earlier and more lasting peace by intelligent negotiation, instead of securing a peace by the complete exhaustion of one or the other of the belligerents.

Such a course would also immeasurably, I believe, strengthen our military force in this country, because when the objects of this war are clearly stated and the people approve of those objects they will give to the war a popular support it will never otherwise receive.

Then, again, honest dealing with the entente allies, as well as with our own people, requires a clear statement of our objects in this war. If we do not expect to support the entente allies in the dreams of conquest we know some of them entertain, then in all fairness to them that fact should be stated now. If we do expect to support them in their plans for conquest, and aggrandizement, then our people are entitled to know that vitally important fact before this war proceeds further. Common honesty and fair dealing with the people of this country and with the nations by whose side we are fighting, as well as a sound military policy at home, requires the fullest and freest discussion before the people of every issue involved in this great war and that a plan and specific declaration of our purposes in the war be speedily made by the Congress of the United States.