

Congressional Debates
of the
14th Amendment
to the
United States Constitution

CONGRESSIONAL GLOBE ON THE 14th AMENDMENT

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Forward

These are the Congressional debates leading to the passage in Congress and the subsequent submission to the several states of what would become the fourteenth amendment to the United States Constitution. The link preceding the Table of Contents may be used to view the actual images used in the processing of this text. Those images are readable but not searchable. Every effort has been made to ensure the accuracy of this text. With such a volume of material some errors are inevitable. If you find errors, please notify me at Duetmaster<at>aol-dot-com. This is electronic version 1.0. When sufficient changes are found necessary I will update this document and change the version number.

The purpose of making this document was simply to facilitate a greater understanding of the intent of those who implemented this change to our Constitution. I will not give my views on this subject as I wish everyone reading this material to come to their own carefully considered conclusions. I will state, however, that the Senate debates are much more informative than those in the House. If your time is limited I would recommend skipping the House debates. There is some interesting information in the House debates concerning the constitutional issues of the presidential actions during reconstruction but not so much directly related to the meaning of the amendment itself.

I have included three speeches from the Appendix to the Congressional Globe. All three were actually given before Congress and thus I felt necessary to include them. There are other speeches recorded in the Appendix of the Congressional Globe but as far as I know none of these other speeches were actually given before Congress and would thus have had little to no effect in the debates. This is the reason I excluded them.

REPORTS OF COMMITTEES.

Mr. FESSENDEN. The joint committee, so called, on reconstruction have directed me to report, first, a joint resolution proposing an amendment to the Constitution of the United States; second, a bill to provide for restoring to the States lately in insurrection their full political rights; third, a bill declaring certain persons ineligible to office under the Government of the United States. They directed me, further, in reporting this resolution and bills, to say that it was the intention of the committee to accompany them with an extended report of their reasons, and the grounds upon which they report them. Unfortunately, however, such has been the situation of the committee, relying upon the chairman, who has been unable to attend to it on account of illness, that this report has not been drawn; and perhaps we may ask leave to submit the report hereafter in connection with the bills and resolution now reported. It was thought advisable, as it was so late in the session, not to withhold the measures proposed for action for the reason I have stated. It is very possible that the report may be made hereafter if it shall please the Senate to receive it.

The joint resolution (S. R. No. 78) proposing an amendment to the Constitution of the United States; the bill (S. No. 292) to provide for restoring to the States lately in insurrection their full political rights; and the bill (S. No. 293) declaring certain persons ineligible to office under the Government of the United States, were severally read a first time by their titles, and passed to a second reading.

2332

THE CONGRESSIONAL GLOBE

May 2,

RECONSTRUCTION.

Mr. WILLIAMS. I ask leave to introduce at this time, for the purpose of having it printed, an amendment to the bill (S. No. 292) to provide for restoring to the States lately in insurrection their full political rights.

Mr. POMEROY. I ask for the reading of the amendment.

The PRESIDENT *pro tempore*. It will be read if there be no objection.

The Secretary read the amendment, which was to strike out section one of the bill and to insert the following in lieu thereof:

That whenever any one of the States lately in insurrection shall ratify the above proposed amendment, as required by the Constitution of the United States, and shall conform its constitution and laws thereto, the Senators and Representatives from such State, after the 4th day of March, 1867, if found duly elected and qualified, shall, upon taking the required oaths, be admitted into Congress: Provided, That Senators and Representatives from Tennessee and Arkansas, respectively, shall be admitted, if elected and qualified as aforesaid, when either of said States shall ratify, as aforesaid, said proposed amendment.

Mr. WILLIAMS. Mr. President, I beg permission to say that this amendment embodies the views I presented to the committee, and I introduce it at this time so that it may be printed and examined before the Senate proceeds to the consideration of the bill. I invite attention to the fact that by this amendment Senators and Representatives from the so-called confederate States are not allowed to take their seats in Congress until the 4th day of March, 1867, with the exception of Tennessee and Arkansas, giving the loyal States an opportunity, if they desire so to do, to make the proposed constitutional amendment a part of the Constitution of the United States before that time. Should the loyal States adopt that amendment, I have little doubt that it would be adopted by enough of the other States to make it a part of the Constitution before the 4th of March, 1867; but if the loyal States should refuse to adopt the amendment and say that they do not want the guarantees and security for which it provides, then, so far as I am advised at present, I can see no good reason for refusing any longer to receive representation from these insurgent States. Tennessee and Arkansas are made exceptions. Their Senators and Representatives are to be received as soon as they ratify this constitutional amendment; and I believe, from the condition of their people and the character of their constitutions and laws, that they are entitled to a precedence over the other States that have been in rebellion. I believe that this amendment is better in all respects than the original section; but if the Senate, after consideration, decides otherwise, I shall cheerfully acquiesce in its judgment.

The PRESIDENT *pro tempore*. The order to print will be entered if there be no objection.

Mr. DIXON. Mr. President, I ask leave to give notice of my intention to offer, by way of amendment to the bill and resolutions reported by the joint committee on reconstruction, and as a substitute therefor, the following joint resolution:

Resolved by the Senate and House of Representatives of the United States of America in Congress

assembled, That the interests of peace and the interests of the Union require the admission of every State to its share in public legislation whenever it presents itself, not only in an attitude of loyalty and harmony. but in the persons of representatives whose loyalty cannot be questioned under any constitutional or legal test.

I ask the consent of the Senate to say a few words in explanation of my views on the subject.

What the country expected from Congress was a practical scheme for hastening the reestablishment of all the States in their full constitutional relations. This report produces a plan which must inevitably put off this end, so strongly desired and demanded. Does any one believe that the southern States will accept the proposed constitutional amendment? Certainly they will decline. They will say, "Let us see what the next elections in the North develop. This Congress may recommend the amendment; the next Congress, which is to be chosen in the fall of the present year, and which may meet on the 5th of March, 1867, may be of a different mind. It may repeal all that this Congress has enacted; we had better wait."

The "restoration of the States to their practical relations in the Union," as Mr. Lincoln happily phrased it, is therefore put off, if this report is accepted, for at least another year; and the practical result of the labors of the reconstruction committee will be to have made up a platform on which those who choose to stand upon it may go before the country at the fall election. That is all; and in our judgment that is not enough to satisfy the country.

It is hardly worth while to discuss the merits of measures which to be valid most be accepted by communities which are sure to reject them; but we may remark that it is not probable so heavily taxed and so poor a people as those of the southern States will assume the payment of the enormous and wastefully contracted rebel debt, and that no party would ever dare to go before the people of this country with a proposition for the United States to assume this debt, whose certificates are held chiefly by foreign speculators upon our national ruin. Further, that it is scarcely probable the people who have a majority in the South will voluntarily disfranchise themselves; and that the extremes to which partisan passions have been inflamed in Tennessee by the disfranchisement of the greater part of the population there, does not encourage practical men to look for the fruits of peace from such a policy enforced elsewhere.

Even the reconstruction committee acknowledge that "it is expedient that the States lately in insurrection should, at the earliest day consistent with the future peace and safety of the Union, be restored to full participation in all political rights." Now, what have we already to "secure future peace and safety?" In the first place, we have the civil rights act, under which any citizen who is denied justice by local or State courts is empowered to appeal to the United States court, which is commanded, with all its machinery, to interfere in his behalf; and if necessary, to use the military power of the United States to secure him justice. Surely no citizen need suffer wrong while this act remains. In the next place, we have a form of oath, prescribed by Congress; which makes it impossible for any one who voluntarily engaged in rebellion to enter Congress or to hold any Federal office without committing perjury, for which he may and ought to be indicted and punished. Finally, we have the Freedmen's Bureau for a whole year, during which, with a wise and conciliatory policy, we may hope the labor question in the South will assume something of its normal condition.

But let us not forget, on the other hand, the dangers which attend impracticable measures. Suppose, going before the people on this platform, built by the congressional committee, we are beaten. In that event we may be sure that the next Congress will not only refuse to make the demands which this one makes, but it will most probably repeal the civil rights act and the test oath; and thus our own imprudence will have sacrificed the great objects we have already gained.

The amendment proposed is right enough, if the reconstruction committee can get any southern State to accept it. But unless they do so, it is of course only a shot in the air, which may be right and true, but will hit nowhere—unless indeed it falls upon the heads of the gunners. Is it not far wiser for Congress to make sure of what it has done; to cry "Enough for this time;" to be content that it has secured the supremacy of law and justice in all our territory; and to admit at once to their seats all Representatives and Senators who can take the prescribed oaths?

One Congress cannot bring about the millennium; there are years to come in which we may all join upon a platform of larger liberty, and argue the questions and urge the reforms which still remain. For this time we have reason to be content; for we have put down armed resistance to the laws, and Congress has given us, in the civil rights act, a guarantee for free speech in every part of the Union. It is our own fault if, having thus secured the right to argue, we do not enlighten prejudice and mere opposition, and show that equal liberty is the best for all.

What I have read seems to me so wise and just, that I have adopted it as the best expression which I can make of my own views. It is the leading editorial article in the New York Evening Post of May 1, a journal which

certainly is not excelled in ability, patriotism, and influence by any newspaper in this country. Coming from such a source. I cannot but hope that these wise, calm, and statesmanlike views may have some influence even in this body, as they certainly will have among the intelligent people of the United States. They express, in my judgment, the calm and resolute convictions of thinking men, and will, so soon as public opinion can legitimately declare itself, take the form and be clothed with the authority of public law.

Leave was granted to introduce the joint resolution (S. R. No. 81) providing for the representation of the several States in the Congress of the United States; which was read twice by its title.

Mr. FESSENDEN. I wish to make a single remark upon the proposition of the honorable Senator from Connecticut. He thinks that the remarks which he read from the New York Evening Post are so very wise, so very just, that he has some hope to use his own language, that they may not be without their effect even upon the members of this body; thus, I suppose, intending to intimate that the last place where wise and just views could be expected to have any effect would be upon the members of this body. Sir, we have not given ourselves over to the keeping of the honorable Senator from Connecticut, or those who act with him. We do not pretend to any very particular wisdom or any particular sense of justice; but we who were on the joint committee of fifteen, and who are most immediately touched by the remark, feel that at any rate we have tried to do our duty. We have been in session a considerable length of time but not longer than we deemed it absolutely necessary in order to reach a conclusion, and in reaching that conclusion we have been obliged to take into consideration a great many things: first, what it would be wise and just to do, and next what, if it is wise and just, we can do; what would be acceptable in the first place to Congress, and in the next place what would be acceptable to the people. Unquestionably in the committee there was very considerable difference of opinion. That difference of opinion had to be reconciled. I do not suppose that the scheme as presented would be exactly in all particulars what would suit perhaps a large number; but the question is one beyond mere personal opinion, and mere adherence to personal opinion or personal feeling either; and the committee, after much deliberation, came to the conclusion that its duty was to agree upon that which seemed to be the best

scheme with regard to reconstruction upon which they could come to a unanimous or nearly unanimous agreement.

The proposition made by the honorable Senator from Oregon this morning would indicate, for instance, that he is not exactly satisfied with the result to which the committee came. I really, with all respect to my friend from Oregon, beg leave to say that when a committee after great deliberation has come to a conclusion upon a subject which has been assented to and reported, at any rate the members of the committee should abstain from pressing individual views in advance of the general action of the body to which the report has been made, because it has a tendency to weaken the effect of the report itself.

I accede to what has been said by the honorable Senator from Connecticut with regard to the eminent standing of the press from which he has read; but, eminent as it is, I think it is not immodest on the part of the committee of fifteen, selected with very considerable care, and, with one exception, perhaps, composed of gentlemen eminently fitted for the position which was assigned to them, to suppose that after months of deliberation, after great study and reflection, after careful examination of the evidence before them, not only as to what was wise to do, but as to what could be done, the united opinions of a very large majority of them might be supposed to come about as near the right as the opinion of an individual who may happen to write in the columns of a newspaper. I acknowledge, as a general rule, that the editor of a newspaper knows by intuition far more of the state of the country and what is wise to be done, no matter what his age, or what his position, than Congress can possibly know; but I think, at any rate, a little faith should be given to a committee of Congress, so large as this committee, and to Congress itself, devoting itself carefully to the study of the great questions on which it proposes to act. I cannot agree with my honorable friend from Connecticut, that because the opinions which he read happen to appear in a press of character they are therefore so conclusive as at once to overturn all the conclusions to which, after much deliberation, the committee have arrived. At any rate I shall beg leave to ask, when the proper time comes, for the careful consideration of the Senate of all these important questions; and having no pride of opinion on the subject, if Congress shall come to the conclusion that the scheme which has been presented needs amendment and alteration, I shall submit with perfect willingness and perfect contentment, in the hope that something wiser and better will be reached; but until we come to the discussion I am unwilling to admit, even upon the authority of the New York Evening Post, that what we have done cannot be acceptable to the people of the United States.

Mr. DIXON. I suppose the Senator from Maine did not intend, in his opening remarks, to question my right to

offer the amendment.

Mr. FESSENDEN. Not at all; I only suggested to the Senator that when he stated that the wisdom of those remarks of the Post might, he hoped, have some effect even upon this body, it was rather an intimation that this body could not be expected to act wisely and justly.

Mr. DIXON. The word "even," as used by me, may have, I think, a different meaning from what the Senator supposes. My meaning was that those remarks ought to have influence, even upon so distinguished and so wise a body as this; but I will consent to strike out the word "even," if it is offensive to the Senator.

Mr. FESSENDEN. Not at all.

Mr. DIXON. I meant to say, and I now repeat, that even in such a body as the Senate of the United States, words of wisdom like these might have their effect. I certainly would be the last person to reflect on the Senate, or to reflect on the committee, but I suppose I have a right to say that I do not think the report of the committee contains all the wisdom which even may exist in the Senate or in the committee itself.

Now, Mr. President, I beg leave to say a word with regard to that report and the measure which the committee have proposed. But for my great respect for the members of that committee and its chairman, and were I not forbidden by my knowledge that they are incapable of such a thing, from the bare reading of their reported propositions I should suppose that, as this writer intimates, whose language I have adopted, the object of the report was to present a scheme which could not be accepted. I am forbidden to entertain such an opinion by my great respect for the committee. I know they are incapable of anything of that sort, and I therefore am obliged to suppose that they thought this might be accepted, that it might possibly, under some supposable circumstances, calm the agitation which is prevailing on this subject, and result in the readmission of members from the late rebel States. That, no doubt, was their intention; but I beg leave to say that it seems to me that it is utterly impossible that that should ever be the effect of it. For example, allow me to particularize. After the States have accepted these terms, after they are represented in this body and in the House of Representatives for a period of nearly four years, if they accept the proposition next fall, they are to be denied the right of voting for their own Representatives in Congress; for we are told every day, and I believe it is to a certain extent true in some States, that the whole mass of the people participated in the rebellion, or at least, in the language of the report, "adhered" to it. The language of the report does not exclude merely those who were original conspirators, but all who may finally have adhered to the rebellion. Now, consider that proposition for a moment. These States are to be represented in the other House and in this body after having accepted these terms, and still their representatives are to be chosen without the votes of the people. I would ask, who is to vote? The colored men cannot vote. Take South Carolina or Mississippi or Georgia. Who is to choose Representatives in those States? I will not say it is a mockery, because my respect for the committee forbids; but I must say that it does seem to me that no man can expect that any of these States will ever accept the terms proposed. I agree with the Evening Post on that point. I will say further that I am not sure, if they would accept it, they ever ought to be permitted to vote at all.

Mr. FESSENDEN. I wish to ask the Senator a question. I have the impression that President Johnson has said, over and over again, that the government of these States ought to be exercised by the loyal portion, those who had been loyal to the Union.

Mr. DIXON. In the first place, I beg leave to say to the Senator from Maine that it makes no difference to me, in forming my opinions, what the President or any other man says. If the President had said so, it would not be of binding authority on me, unless my judgment approved it. In the next place, I say that I agree with the sentiment, not because the President said it, but because I believe it is a true and correct sentiment. But that is not what the report says. The report of the committee does not say that only loyal men can vote. I know the President says that; everybody says it who thinks as I do; but the question is, what is a loyal man?

Mr. FESSENDEN. Did he not say those who had been loyal, those who had not participated in the rebellion, should be those intrusted with the Government? Was not that his recommendation in regard to Tennessee?

Mr. DIXON. When these States are again regarded as members of the Union, if they accept the terms of readmission proposed to them, all loyal men at the time ought to be permitted to vote. I will not say that the exception made in one clause of the report is not correct, that certain leaders be disfranchised; but I say that to disfranchise a whole people, to tell them that they may send members to Congress and still shall not vote for them—for that is the result of it—to say, "You may be represented, but you shall not vote," seems a mockery. Under it there might hardly be twenty voters, possibly, in a State.

Mr. President, why did I read the article from the New York Evening Post? Not as an authority. It struck me that the views were so correct and so sound that I desired to adopt them as my own, and I was very certain that the source from which those ideas came would have great weight with the loyal people of this country, and properly

so; that that paper had a character for loyalty and for patriotism and for ability and for honesty and integrity which gave it weight; that what came from the distinguished and venerable editor of that paper was entitled to weight, even in the Senate of the United States, and therefore I read the article and adopted its language.

I have only one word more to say. I am extremely desirous—no man can be more desirous than I am—to unite upon some plan which shall pacify the country, and which shall restore and reconstruct the Union. I had hoped this committee would propose something which would accomplish that. As to the plan proposed, I am utterly hopeless with regard to its producing any good effect. I may be mistaken. I have the highest respect, I need not say, for the members of the committee. I know they are patriotic; but I think they are utterly mistaken, and I think I have the right to say it, in all respect to them.

Mr. FESSENDEN. The Senator from Connecticut has gone into a discussion of the merits of the report. I said nothing of the merits of the report. I did not intend to say anything, and I do not now, on that subject. I merely rise to say that I choose to avoid anything of that description until the report comes properly before the Senate, when, if I have sufficient strength, I shall endeavor to explain the views of the committee upon that subject so far as it may become my duty to explain them. In the mean time I suppose we are to have gentlemen giving us the opinions, which I think we can find out for ourselves, of different persons throughout the country. I wish only to say that, notwithstanding my respect for each and all of those who may choose to instruct us on the subject, we have a duty to discharge, and must discharge it in the best way we can upon our own views and sentiments as to what the condition of the country demands.

Mr. GRIMES. There seems to be some controversy between the Senator from Connecticut and the Senator from Maine as to what are, at this time, the opinions of the President of the United States; and occupying the peculiar relations which the Senator from Connecticut does to the Chief Magistrate of the country, I desire to refer, as he has done, to a newspaper, one published in this city, purporting to give the last revised opinions of the President, and to inquire of him whether or not they are authentic. I hold in my hand the National Intelligencer of this morning, which contains an article represented to me to have been telegraphed from the precincts of the White House to the various newspapers in the country, headed, "The President and his Cabinet in Council:"

"It is understood that at the Cabinet meeting yesterday the President invited an expression of opinion from the heads of Departments respecting the propositions reported on Monday last by the congressional committee on reconstruction. An interesting and animated discussion is said to have ensued, in the course of which, if rumor be true, Secretary Seward declared himself in very decided and emphatic terms against the plan of the committee and in favor of the immediate admission of loyal representatives from the lately rebellious States.

"Secretary McCulloch was as positive as the Secretary of State in his opposition to the plan recommended by the committee, and expressed himself strongly in favor of an immediate consummation of the President's restoration policy by the admission into Congress of loyal men from the southern States,

"Secretary Stanton was equally decided in his opposition to the committee's propositions, was for adhering to the policy which had been agreed upon and consistently pursued by the Administration, and was gratified that the President had brought the subject to the consideration of the Cabinet.

"Secretary Welles was unequivocally against the committee's was earnest in scheme, and his support

of the President's policy, comprehending the instant admission in to Congress of loyal representatives from the States lately in rebellion.

"Secretary Harlan was rather reticent, and expressed no opinion."

"Postmaster General Dennison was in favor of carrying out the restoration policy of the President, but expressed some doubts as to the precise time at which loyal representatives from the southern States should be admitted to seats in Congress.

"Attorney General Speed was not present at the meeting being on a visit to his home in Kentucky. The President was earnest in his opposition to the report of the committee, and declared himself against all conditions- precedent to the admission of loyal representatives from the southern States in the shape of amendments to the Constitution or the passage of laws. He insisted that under the Constitution no State could be deprived of its equal suffrage in the Senate, and that Senators and Representatives ought to be at once admitted into the respective Houses, as prescribed by law and the Constitution. He was for a rigid adherence to the Constitution as it is, and remarked that, having sustained ourselves under it during a terrible rebellion, he thought that the Government could be restored without a resort to amendments. He remarked in general terms that if the organic law is to be changed at all, it should be it a time when all the States and all the people can participate in the alteration."

Now, Mr. President, if I understand the force of language, that is not the position that the President of the United States has hitherto occupied. If I understand it—and perhaps the Senator from Connecticut can set me right if I am in error—the President of the United States now insists that these States shall be immediately represented; that they are entitled, under the Constitution of the United States, to immediate representation in the Senate and House of Representatives without any antecedent conditions, and the most of his Cabinet concur in that opinion. I suppose that this is the antagonist proposition that is put forth from the White House in opposition to the report of the committee of fifteen, commonly called the committee on reconstruction—the immediate unconditional admission, without any terms, without any conditions, of the representatives of those States and of the people of those States.

Mr. SUMNER obtained the floor.

Mr. DIXON. I ask the Senator to yield to me for a moment to reply to the Senator from Iowa.

Mr. SUMNER. Certainly.

Mr. DIXON. The Senator from Iowa intimated in his opening remarks that I had some peculiar knowledge or means of knowledge of the President's views. He spoke of the "peculiar relations" in which I stand to the President. The Senator is entirely mistaken in regard to that. My relations to the President are precisely similar to those of the Senator himself. I have seen the President but once within the space of two mouths, and then for not over five minutes. I take his views from his written, published statements.

Mr. GRIMES. If the Senator will excuse me, the fact that the Senator's resolution was identical in spirit and almost in terms with the language attributed in the National Intelligencer of this morning to the President led me to infer—

Mr. DIXON. If it is identical in spirit, then the Senator is mistaken in another point when he says that the President has now taken new views and new grounds. He says that the language attributed to the President in the paper from which he has read, is identical in spirit with the resolution that I have offered. My resolution is taken from the President's veto message of the Freedmen's Bureau bill more than two months ago; so that the Senator will see that he is mistaken in supposing that there has been any change in the President's views, if mine are identical with his; and I do not suppose there has been any change. I do not suppose that the President has changed from the views contained in that resolution. I copied the resolution from the words of the President contained in that veto message because I thought they were extremely well expressed and because they were my views.

Now, I desire to say with regard to this resolution of mine, that I have not offered it in consequence of any consultation with any human being. I have not seen the President or any member of the Cabinet or any human being with regard to it. I read the article in the Evening Post, and it struck me as being true and as coming from a source entitling it to great weight and authority. I knew it would be respected by this body from the character of the writer. I thought it correct, and it was exactly in accordance with my sentiments.

I say this because it might possibly be supposed from what the Senator said that this resolution of mine has been offered in consequence of some consultation. Sir, I am in consultation with nobody. I attempt to act here as a Senator in accordance with my own views of right. I may be wrong; but I am under the lead of no master and no man. I care not what the President or anybody else thinks. If what he does and says is right, I support him; if they are wrong, I denounce him. That, I take it, is the position of every Senator. No man is worthy of being a Senator unless that is his position. I repeat that I have offered this resolution without consultation with anybody.

Now, a single word as to the President's views. I do not see that there is any very great contradiction. It cannot be supposed that the President will in every statement which he makes of his views express every single shade of idea that he may have heretofore expressed. He thinks that the southern States should be represented. How and by whom? Take all his language together, and it is by loyal men when they come here in an attitude of harmony and loyalty to the Government and are represented by loyal men. That is what my resolution says; that is what the President says, and I believe that is his view.

Mr. GRIMES. I did not intend to convey the idea that the Senator from Connecticut has a master; but I submit, after all he has said, that I was perfectly justified in saying that peculiar relations subsisted between him and the President, when he himself admits that he went, not only for the spirit, but for the identical language of his resolution, to the celebrated veto message of the President of the United States on the Freedmen's Bureau bill.

Mr. DIXON. It is no uncommon thing for a resolution to be offered in language taken from a message of the President of the United States. It is frequently done, and it is very proper, as it strikes me. In some remarks that I had the honor of making about two months ago in the Senate, I embodied that extract from the message of the President as the expression of my own views. I then said that I thought it was right, and I have now offered it in

the form of a resolution.

Mr. SUMNER. When I rose a moment ago I intended to make a remark in reply to the Senator from Connecticut, but the question seems to have drifted out of sight. I will observe, however, that the question involved in his proposition is so important that I never regret—

Mr. SHERMAN. I should like to know if the unfinished business does not come up at this time.

The PRESIDENT *pro tempore*. The Chair was about to remark that the morning hour has expired, and it is the duty of the Chair to call up the unfinished business of yesterday.

Mr. SHERMAN. I have no objection to allowing the special order to pass over informally for a few moments to afford Senators an opportunity to make explanations on this subject.

The PRESIDENT *pro tempore*. The order of the day can only be laid aside by unanimous consent. No objection being made, it is laid aside informally.

Mr. SUMNER. I was about to say that the proposition involved in the resolution of the Senator from Connecticut is so important that it may be considered as perhaps always in order to discuss it. I do not know that we ought to pass a day without discussing it in some way. I certainly do not deprecate this discussion; but while I say that, I am very positive on another point: I should deprecate any effort now to precipitate a decision on that question; and I most sincerely hope that the Senator from Maine, the chairman of the committee on reconstruction, who has this matter in charge, will bear that in mind. I do not believe that Congress at this moment is in a condition to give the country the best proposition on this important subject. I am afraid that that excellent committee has listened too much to voices from without, insisting that there must be an issue presented to the country. For myself, I have always thought that that call was premature. There is no occasion now for an issue to be presented to the country. There are no elections in any States. The election in Connecticut is over. The election in New Hampshire is over. There are to be no elections before next autumn. What is the occasion, then, for an issue to be presented to the country? I see none, unless Congress, after a most careful and mature discussion of the whole subject, is able to present an issue on which we can all honestly and as one phalanx go forward to battle.

I do not intend to be drawn into a premature discussion of the issue presented by the report of the committee on reconstruction. I merely speak now to the question of time. I am sure that that report could not have been made in the last week of March. I am equally sure that if the committee had postponed their report until the last week of May they would have made a better one than they have made in the last week of April. I hope, therefore, following out that idea, that all decision of this question will be postponed as long as possible, to the end that all just influences may come to Congress from the country, and that Congress itself may be inspired by the fullest and amplest consideration of the whole question.

Why, sir, there is the evidence which has been laid before this committee. We have not yet seen it together. That evidence ought to be together; it ought to be laid before the whole country; and we ought to have returning to us from the country the just influence which the circulation of that evidence is calculated to cause. I am sure that wherever that evidence is read the people will say Congress is justified in insisting upon security for the future. To that end, I take it, the evidence was taken, and I hope that Congress will not act until we get the natural and legitimate influences from that evidence.

But, sir, allow me to say, by way of comment on the proposition of the Senator from Connecticut, that it seems to me my excellent friend, when he brought forward his proposition, forgot two things.

Mr. DIXON. Probably more than that.

Mr. SUMNER. He says probably more than that; but the two things he forgot were so great, so essential, that to forget them was to forget everything. In the first place, he forgot that we had been in a war; and in the second place, he forgot that four million human beings had been changed from a condition of slavery to freedom. Those two great ruling facts my excellent friend forgot, evidently, when he drew up his proposition. He forgot that we had been in a war, because he fails to make any provision for that security which common sense and common prudence, the law of nations, and every instinct of the human heart require should be made. He provides no guarantee. Sir, the essential thing at this moment, is a guarantee. The Senator abandons that; but it is because he forgets that we have been in a war. If I, like the Senator from Connecticut, could forget this terrible war, with all the blood and treasure that it has cost us, I, too, could forget the guarantees; but as that war is always in any mind, the Senator will pardon me if I insist that we shall have guarantees.

Mr. DIXON. If the Senator will allow me—

Mr. SUMNER. In one moment I shall have done. In the second place, I have said that my excellent friend forgets that four million human beings have been changed in their condition. Four million slaves have been declared to be freemen; and by whom, and

by what power? By the national Government; and let me say that, as the national Government gave that freedom, it belongs to the national Government to secure it. The national Government cannot leave those men whom it has made free to the guardianship or custody or tender mercies of any other government. It is bound to take them into its own keeping, to surround them all by its own protecting power, and invest them with all the rights and conditions which in the exercise of its best judgment shall seem necessary to that end. All that my excellent friend has absolutely forgotten. It is not in his mind. If I could bring myself to such an obliviousness, if I could bathe so completely in the waters of Lethe as my excellent friend from Connecticut seems to have done daily in these recent times, I could join him in the support of his proposition.

Mr. DIXON. One word in reply to the Senator from Massachusetts, with the consent of the Senate. The Senator says that I have forgotten many things, and among others the guarantees required by the four million slaves who have been emancipated. I desire to ask the Senator what guarantee those persons have in the proposition reported by the committee. The Senator exhausted all the terms of opprobrium in the English language in denouncing a resolution which was before the Senate some time since, and which contained the only guarantee for the colored race that is contained in this report. The only guarantee which he says he keeps constantly in his mind, and which I have forgotten, contained in this report is that providing that if those persons are not allowed to vote in the States in which they reside they shall not be counted in the apportionment of Representatives. The Senate has not yet forgotten—the echoes are still ringing in this Hall—what the Senator said in regard to that proposition. If the English language contains any term of reproach, if it can be coined into any form or shape of opprobrium which he did not exhaust on that subject, and some of which my friend from Maine [Mr. Fessenden] cited as beauties of rhetoric, I am mistaken. I think he could have gone no further in denouncing that very proposition which is the only guarantee in this report; and yet he says I have forgotten that they require guarantees. I beg leave to remind the Senator that he too has forgotten his own words on that subject.

Mr. SUMNER. Not at all.

The resolution of Mr. Dixon was ordered to be printed.

RECONSTRUCTION,

Mr. STEWART. I desire to offer, for the purpose of amendment to the joint resolution (S. R. No. 78) reported by the committee of fifteen, the proposition which I now submit. It defines what is meant by "citizens," in the first article of the proposed constitutional amendment, and strikes out the third section as reported by the committee.

I also desire to offer, as a substitute for the two bills reported by the committee, a bill embodying both of those bills in one; and providing, further, that when the constitutional amendment, as I propose to change it, shall have been adopted by the requisite majority, and any State lately in insurrection shall have consented to the conditions named in the bill, that State may be admitted, with an alternative offering them, as I proposed before, with a slight limitation, amnesty for an extension of suffrage by themselves in their State constitutions. I propose, in other words, to give them the alternative of enfranchising or disfranchising — of disfranchising as proposed by the committee, or of enfranchising and receiving amnesty.

The PRESIDENT *pro tempore*. The Chair will state that the bills and joint resolution to which the Senator proposes to offer amendments, are not now before the Senate; but this will be regarded by the Chair as notice that the Senator will, when these questions come up, propose the amendments which he has now submitted.

Mr. STEWART. I desire now simply to have an order for their printing.

The proposed amendments were received informally, and ordered to be printed.

RECONSTRUCTION.

Mr. FESSENDEN. Before the Senate proceeds with the regular business of the day, I wish to say a word in reference to the report of the committee on reconstruction, or rather the joint resolution which has been passed by the House of Representatives, and is now upon the table of the Senate, reported by that committee. Many inquiries have been made of me by gentlemen as to when I proposed to call up the resolution which has been passed by the other House, for action

on the part of the Senate, and we have come to the conclusion that we shall ask the Senate to proceed to the consideration of that resolution on Monday next; and I beg also to express the hope that when it is taken up we may devote the entire hours of the Senate, with the exception, of course, of the morning hour each day, strictly to the consideration of that business, and with the expectation, or the hope at least, that we shall be able to dispose of it in the course of the week.

Mr. JOHNSON. Does the Senator say that he has consulted all the members of the committee?

Mr. FESSENDEN. I consulted all who were present at the time. I did not consult the Senator from Maryland because he was not in his seat. I will now only repeat the hope I before expressed, that we may take up the subject on Monday next and confine ourselves to its consideration, with the idea that we may be able to finish it in the course of next week.

RECONSTRUCTION.

Mr. WADE submitted an amendment which he intends to offer to the joint resolution (H. R. No. 127) proposing an amendment to the Constitution of the United States when it comes up for consideration.

The amendment was received, and ordered to be printed.

RECONSTRUCTION.

Mr. FESSENDEN. I desire to make a remark to Senators, in consequence of the notice which I gave a week ago that I should today call up the joint resolution reported by the committee on reconstruction, which has already been passed by the House of Representatives. I am obliged, today, to ask the indulgence of the Senate, and to say that I shall not desire them to proceed with that matter until Wednesday. I am utterly unable, myself, to take charge of it; but whatever may be my own condition on Wednesday, I shall expect the Senate to proceed with the consideration of the subject. I defer calling it up until Wednesday morning, when I hope to have the attention of the Senate to it.

RECONSTRUCTION.

The Senate, as in Committee of the Whole, proceeded to consider the joint resolution (H. R. No. 127) proposing an amendment to the Constitution of the United States, which was read as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two thirds of both Houses concurring,) That the following article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three fourths of said Legislatures, shall be valid as part of the Constitution, namely:

ARTICLE —.

Sec. 1. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sec. 2. Representatives shall be apportioned among the several States which may be included within the Union, according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But whenever, in any State, the elective franchise shall be denied to any portion of its male citizens not less than twenty-one years of age, or in any way abridged, except for participation in rebellion or other crime, the basis of representation in such State shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens not less than twenty-one years of age.

Sec. 3. Until the 4th day of July, in the year 1870, all persons who voluntarily adhered to the late insurrection, giving it aid and comfort, shall be excluded from the right to vote for Representatives in Congress and for electors for President and Vice President of the United States.

Sec. 4. Neither the United States nor any State shall assume or pay any debt or obligation already incurred, or which may hereafter be incurred, in aid of insurrection or of war against the United States, or any claim for compensation for loss of involuntary service or labor.

Sec. 5. The Congress shall have power to enforce by appropriate legislation the provisions of this article.

Mr. HOWARD. Mr. President, I regret that the state of the health of the honorable Senator from Maine [Mr. Fessenden] who is

chairman, on the part of the Senate, of the joint committee of fifteen, is such as to disable him from opening the discussion of this grave and important measure. I was anxious that he should take the lead, and the prominent lead, in the conduct of this discussion, and still entertain the hope that before it closes the Senate will have the benefit of a full and ample statement of his views. For myself, I can only promise to present to the Senate, in a very succinct way, the views and the motives which influenced that committee, so far as I understand those views and motives, in presenting the report which is now before us for consideration, and the ends it aims to accomplish.

The joint resolution creating that committee intrusted them with a very important inquiry, an inquiry involving a vast deal of attention and labor. They were instructed to inquire into the condition of the insurgent States, and authorized to report by bill or otherwise at their discretion. I believe that I do not over-state the truth when I say that no committee of Congress has ever proceeded with more fidelity and attention to the matter intrusted to them. They have been assiduous in discharging their duty. They have instituted an inquiry, so far as it was practicable for them to do so, into the political and social condition of the insurgent States. It is very true, they have not visited any localities outside of the city of Washington in order to obtain information; but they have taken the testimony of a great number of witnesses who have been summoned by them to Washington, or who happened to be in Washington, and who had some acquaintance with the condition of affairs in the insurgent States. I think it will be the judgment of the country in the end that that committee, so far as the procuring of testimony upon this subject is concerned, has been not only industrious and assiduous, but impartial and entirely fair. I know that such has been their aim. I know that it has not been their purpose to present to Congress and the country in their report anything unfair or one-sided, or anything of a party tendency. Our anxiety has been to ascertain the whole truth in its entire length and breadth, so far as the facilities given us would warrant.

One result of their investigations has been the joint resolution for the amendment of the Constitution of the United States now under consideration. After most mature deliberation and discussion, reaching through weeks and even months, they came to the conclusion that it was necessary, in order to restore peace and quiet to the

country and again to impart vigor and efficiency to the laws, and especially to obtain something in the shape of a security for the future against the recurrence of the enormous evils under which the country has labored for the last four years, that the Constitution of the United States ought to be amended; and the project which they have now submitted is the result of their deliberations upon that subject.

The first section of the amendment they have submitted for the consideration of the two Houses relates to the privileges and immunities of citizens of the several States, and to the rights and privileges of all persons, whether citizens or others, under the laws of the United States. It declares that—

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

It will be observed that this is a general prohibition upon all the States, as such, from abridging the privileges and immunities of the citizens of the United States. That is its first clause, and I regard it as very important. It also prohibits each one of the States from depriving any person of life, liberty, or property without due process of law, or denying to any person within the jurisdiction of the State the equal protection of its laws.

The first clause of this section relates to the privileges and immunities of citizens of the United States as such, and as distinguished from all other persons not citizens of the United States. It is not, perhaps, very easy to define with accuracy what is meant by the expression, "citizen of the United States," although that expression occurs twice in the Constitution, once in reference to the President of the United States, in which instance it is declared that none but a citizen of the United States shall be President, and again in reference to Senators, who are likewise to be citizens of the United States. Undoubtedly the expression is used in both those instances in the same sense in which it is employed in the amendment now before us. A citizen of the United States is held by the courts to be a person who was born within the limits of the United States and subject to their laws. Before the adoption of the Constitution of the United States, the citizens of each State were, in a qualified sense at least, aliens to one another, for the reason that the several States before that event were regarded by each other as independent Governments, each one possessing a sufficiency of sovereign power to enable it to claim the right of naturalization; and, undoubtedly, each one of them possessed for itself the right of naturalizing foreigners, and each one, also, if it had seen fit so to exercise its sovereign power, might have declared the citizens of every other State to be aliens in reference to itself. With a view to prevent such confusion and disorder, and to put the citizens of the several States on an equality with each other as to all fundamental rights, a clause was introduced in the Constitution declaring that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

The effect of this clause was to constitute *ipso facto* the citizens of each one of the original States citizens of the United States. And how did they antecedently become citizens of the several States? By birth or by naturalization. They became such in virtue of national law, or rather of natural law which recognizes persons born within the jurisdiction of every country as being subjects or citizens of that country. Such persons were, therefore, citizens of the United States as were born in the country or were made such by naturalization; and the Constitution declares that they are entitled, as citizens, to all the privileges and immunities of citizens in the several States. They are, by constitutional right, entitled to these privileges and immunities, and may assert this right and these privileges and immunities, and ask for their enforcement whenever they go within the limits of the several States of the Union.

It would be a curious question to solve what are the privileges and immunities of citizens of each of the States in the several States. I do not propose to go at any length into that question at this time. It would be a somewhat barren discussion. But it is certain the clause was inserted in the Constitution for some good purpose. It has in view some results beneficial to the citizens of the several States, or it would not be found there; yet I am not aware that the Supreme Court have ever undertaken to define either the nature or extent of the privileges and immunities thus guaranteed. Indeed, if my recollection serves me, that court, on a certain occasion not many years since, when this question seemed to present itself to them, very modestly declined to go into a definition of them, leaving questions arising under the clause to be discussed and adjudicated when they should happen practically to arise. But we may gather some intimation of what probably will be the opinion of the judiciary by referring to a case adjudged many years ago in one of the circuit courts of the United States by Judge Washington; and I will trouble the Senate but for a moment by reading what that very learned and excellent judge says about these privileges and immunities of the citizens of each State in the several States. It is the case of *Corfield vs. Coryell*, found in 4 Washington's Circuit Court Reports, page 380. Judge Washington says:

"The next question is whether this act infringes that section of the Constitution which declares that

'the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States?'

"The inquiry is, what are the privileges and immunities of citizens in the several States? We feel no hesitation in confining these expressions to those privileges and immunities which are in their nature fundamental, which belong of right to the citizens of all free Governments, and which have at all times been enjoyed by the citizens of the several States which compose this Union from the time of their becoming free, independent, and sovereign. What these fundamental principles are it would, perhaps, be more tedious than difficult to enumerate. They may, however, be all comprehended under the following general heads: protection by the Government, the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject nevertheless to such restraints as the Government may justly prescribe for the general good of the whole. The right of a citizen of one State to pass through or to reside in any other State, for purposes of trade, agriculture, professional pursuits, or otherwise; to claim the benefit of the writ of habeas corpus; to institute and maintain actions of any kind in the courts of the State; to take, hold, and dispose of property, either real or personal, and an exemption from higher taxes or impositions than are paid by the other citizens of the State, may be mentioned as some of the particular privileges and immunities of citizens which are clearly embraced by the general description of privileges deemed to be fundamental, to which may be added the elective franchise, as regulated and established by the laws or constitution of the State in which it is to be exercised. These, and many others which might be mentioned, are, strictly speaking, privileges and immunities, and the enjoyment of them by the citizens of each State in every other State was manifestly calculated (to use the expressions of the preamble of the corresponding provision in the old Articles of Confederation) 'the better to secure and perpetuate mutual friendship and intercourse among the people of the different States of the Union.'"

Such is the character of the privileges and immunities spoken of in the second section of the fourth article of the Constitution. To these privileges and immunities, whatever they may be — for they are not and cannot be fully defined in their entire extent and precise nature — to these should be added the personal rights guaranteed and secured by the first eight amendments of the Constitution; such as the freedom of speech and of the press; the right of the people peaceably to assemble and petition the Government for a redress of grievances, a right appertaining to each and all the people; the right to keep and to bear arms; the right to be exempted from the quartering of soldiers in a house without the consent of the owner; the right to be exempt from unreasonable searches and seizures, and from any search or seizure except by virtue of a warrant issued upon a formal oath or affidavit; the right of an accused person to be informed of the nature of the accusation against him, and his right to be tried by an impartial jury of the vicinage; and also the right to be secure against excessive bail and against cruel and unusual punishments.

Now, sir, here is a mass of privileges, immunities, and rights, some of them secured by the second section of the fourth article of the Constitution, which I have recited, some by the first eight amendments of the Constitution and it is a fact well worthy of attention that the course of decision of our courts and the present settled doctrine is, that all these immunities, privileges, rights, thus guaranteed by the Constitution or recognized by it, are secured to the citizen solely as a citizen of the United States and as a party in their courts. They do not operate in the slightest degree as a restraint or prohibition upon State legislation. States are not affected by them, and it has been repeatedly held that the restriction contained in the Constitution against the taking of private property for public use without just compensation is not a restriction upon State legislation, but applies only to the legislation of Congress.

Now, sir, there is no power given in the Constitution to enforce and to carry out any of these guarantees. They are not powers granted by the Constitution to Congress, and of course

do not come within the sweeping clause of the Constitution authorizing Congress to pass all laws necessary and proper for carrying out the foregoing or granted powers, but they stand simply as a bill of rights in the Constitution, without power on the part of Congress to give them full effect; while at the same time the States are not restrained from violating the principles embraced in them except by their own local constitutions, which may be altered from year to year. The great object of the first section of this amendment is, therefore, to restrain the power of the States and compel them at all times to respect these great fundamental guarantees. How will it be done under the present amendment? As I have remarked, they are not powers granted to Congress, and therefore it

is necessary, if they are to be effectuated and enforced, as they assuredly ought to be, that additional power should be given to Congress to that end. This is done by the fifth section of this amendment, which declares that "the Congress shall have power to enforce by appropriate legislation the provisions of this article." Here is a direct affirmative delegation of power to Congress to carry out all the principles of all these guarantees, a power not found in the Constitution.

The last two clauses of the first section of the amendment disable a State from depriving not merely a citizen of the United States, but any person, whoever he may be, of life, liberty, or property without due process of law, or from denying to him the equal protection of the laws of the State. This abolishes all class legislation in the States and does away with the injustice of subjecting one caste of persons to a code not applicable to another. It prohibits the hanging of a black man for a crime for which the white man is not to be hanged. It protects the black man in his fundamental rights as a citizen with the same shield which it throws over the white man. Is it not time, Mr. President, that we extend to the black man, I had almost called it the poor privilege of the equal protection of the law? Ought not the time to be now passed when one measure of justice is to be meted out to a member of one caste while another and a different measure is meted out to the member of another caste, both castes being alike citizens of the United States, both bound to obey the same laws, to sustain the burdens of the same Government, and both equally responsible to justice and to God for the deeds done in the body?

But, sir, the first section of the proposed amendment does not give to either of these classes the right of voting. The right of suffrage is not, in law, one of the privileges or immunities thus secured by the Constitution. It is merely the creature of law. It has always been regarded in this country as the result of positive local law, not regarded as one of those fundamental rights lying at the basis of all society and without which a people cannot exist except as slaves, subject to a despotism.

As I have already remarked, section one is a restriction upon the States, and does not, of itself, confer any power upon Congress. The power which Congress has, under this amendment, is derived, not from that section, but from the fifth section, which gives it authority to pass laws which are appropriate to the attainment of the great object of the amendment. I look upon the first section, taken in connection with the fifth, as very important. It will, if adopted by the States, forever disable every one of them from passing laws trenching upon those fundamental rights and privileges which pertain to citizens of the United States, and to all persons who may happen to be within their jurisdiction. It establishes equality before the law, and it gives to the humblest, the poorest, the most despised of the race the same rights and the same protection before the law as it gives to the most powerful, the most wealthy, or the most haughty. That, sir, is republican government, as I understand it, and the only one which can claim the praise of a just Government. Without this principle of equal justice to all men and equal protection under the shield of the law, there is no republican government and none that is really worth maintaining.

The second section of the proposed amendment reads as follows:

Sec. 2. Representatives shall be apportioned among the several States which may be included within the Union, according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But whenever, in any State, the elective franchise shall be denied to any portion of its male citizens not less than twenty-one years of age, or in any way abridged, except for participation in rebellion or other crime, the basis of representation in such State shall be reduced in the proportion which the number of such male citizens—

That is, citizens as to whom the right of voting is denied or abridged—

shall bear to the whole number of male citizens not less than twenty-one years of age.

It is very true, and I am sorry to be obliged to acknowledge it, that this section of the amendment does not recognize the authority of the United States over the question of suffrage in the several States at all; nor does it recognize, much less secure, the right of suffrage to the colored race. I wish to meet this question fairly and frankly; I have nothing to conceal upon it; and I am perfectly free to say that if I could have my own way, if my preference's could be carried out, I certainly should secure suffrage to the colored race to some extent at least; for I am opposed to the exclusion and proscription of an entire race. If I could not obtain universal suffrage in the popular sense of that expression, I should be in favor of restricted, qualified suffrage for the colored race. But, sir, it is not the question here what will we do; it is not the question what you, or I, or half a dozen other members of the Senate may prefer in respect to colored suffrage; it is not entirely the question what measure we can pass through the two Houses; but the question really is, what will the Legislatures of the various States to whom these amendments are to be submitted do in the premises; what is it likely will meet the general approbation of the people who are to elect the Legislatures, three fourths of whom must ratify our propositions before they have the

force of constitutional provisions?

Let me not be misunderstood. I do not intend to say, nor do I say, that the proposed amendment, section two, proscribes the colored race. It has nothing to do with that question, as I shall show before I take my seat. I could wish that the elective franchise should be extended equally to the white man and to the black man; and if it were necessary, after full consideration, to restrict what is known as universal suffrage for the purpose of securing this equality, I would go for a restriction; but I deem that impracticable at the present time, and so did the committee.

The colored race are destined to remain among us. They have been in our midst for more than two hundred years; and the idea of the people of the United States ever being able by any measure or measures to which they may resort to expel or expatriate that race from their limits and to settle them in a foreign country, is to me the wildest of all chimeras. The thing can never be done; it is impracticable. For weal or for woe, the destiny of the colored race in this country is wrapped up with our own; they are to remain in our midst, and here spend their years and here bury their fathers and finally repose themselves. We may regret it. It may not be entirely compatible with our taste that they should live in our midst. We cannot help it. Our forefathers introduced them, and their destiny is to continue among us; and the practical question which now presents itself to us is as to the best mode of getting along with them.

The committee were of opinion that the States are not yet prepared to sanction so fundamental a change as would be the concession of the right of suffrage to the colored race. We may as well state it plainly and fairly, so that there shall be no misunderstanding on the subject. It was our opinion that three fourths of the States of this Union could not be induced to vote to grant the right of suffrage, even in any degree or under any restriction, to the colored race. We may be right in this apprehension or we may be in error. Time will develop the truth; and for one I shall wait with patience the movements of public opinion upon this great and absorbing question. The time may come, I trust it will come, indeed I feel a profound conviction that it is not far distant, when even the people of the States themselves where the colored population is most dense will consent to admit them to the right of suffrage. Sir, the safety and prosperity of those States depend upon it; it is especially for their interest that they should not retain in their midst a race of pariahs, so circumstanced as to be obliged to bear the burdens of Government and to obey its laws without any participation in the enactment of the laws.

The second section leaves the right to regulate the elective franchise still with the States, and does not meddle with that right. Its basis of representation is numbers, whether the numbers be white or black; that is, the whole population except untaxed Indians and persons excluded by the State laws for rebellion or other crime. Formerly under the Constitution, while the free States were represented only according to their respective numbers of men, women, and children, all of course endowed with civil rights, the slave States had the advantage of being represented according to their number of the same free classes, increased by three fifths of the slaves whom they treated not as men but property. They had this advantage over the free States, that the bulk of their property in the proportion of three fifths had the right of representation in Congress, while in the free States not a dollar of property entered into the basis of representation. John Jacob Astor, with his fifty millions of property, was entitled to cast but one vote, and he at the ballot-box would meet his equal in the raggedest beggar that strolled the streets. Property has been rejected as the basis of just representation; but still the advantage that was given to the slave States under the Constitution enabled them to send at least twenty-one members to Congress in 1860, based entirely upon what they treated as property—a number sufficient to determine almost every contested measure that might come before the House of Representatives.

The three-fifths principle has ceased in the destruction of slavery and in the enfranchisement of the colored race. Under the present Constitution this change will increase the number of Representatives from the once slaveholding States by nine or ten. That is to say, if the present basis of representation, as established in the Constitution, shall remain operative for the future, making our calculations upon the census of 1860, the enfranchisement of their slaves would increase the number of their Representatives in the other House nine or ten, I think at least ten; and under the next census it is easy to see that this number would be still increased; and the important question now is, shall this be permitted while the colored population are excluded from the privilege of voting? Shall the recently slaveholding States, while they exclude from the ballot the whole of their black population, be entitled to include the whole of that population in the basis of their representation, and thus to obtain an advantage which they did not possess before the rebellion and emancipation? In short, shall we permit it to take place that one of the results of emancipation and of the war is to increase the Representatives of the late slaveholding States? I object to this. I think they cannot very consistently call upon us to grant them an additional number of Representatives simply because in consequence of their own misconduct they have lost the property which they once possessed, and which served as a basis in great part of their representation.

The committee thought this should no longer be permitted, and they thought it wiser to adopt a general principle applicable to all the States alike, namely, that where a State excludes any part of its male citizens from the elective franchise, it shall lose Representatives in proportion to the number so excluded; and the clause applies not to color or to race at all, but simply to the fact of the individual exclusion. Nor did the committee adopt the principle of making the ratio of representation depend upon the number of voters, for it so happens that there is an unequal distribution of voters in the several States, the old States having proportionally fewer than the new States. It was desirable to avoid this inequality in fixing the basis. The committee adopted numbers as the most just and satisfactory basis, and this is the principle upon which the Constitution itself was originally framed, that the basis of representation should depend upon numbers; and such, I think, after all, is the safest and most secure principle upon which the Government can rest. Numbers, not voters; numbers, not property; this is the theory of the Constitution.

By the census of 1860, the whole number of colored persons in the several States was four million four hundred and twenty-seven thousand and sixty-seven. In five of the New England States, where colored persons are allowed to vote, the number of such colored persons is only twelve thousand one hundred and thirty-two. This leaves of the colored population of the United States in the other States unrepresented, four million four hundred and fourteen thousand nine hundred and thirty-five, or at least one seventh part of the whole population of the United States. Of this last number, three million six hundred and fifty thousand were in the eleven seceding States, and only five hundred and forty-seven thousand in the four remaining slave States which did not secede, namely, Delaware, Maryland, Kentucky, and Missouri. In the eleven seceding States the blacks are to the whites, basing the calculation upon the census of 1860, nearly as three to five. A further calculation shows that if this section shall be adopted as a part of the Constitution, and if the late slave States shall continue hereafter to exclude the colored population from voting, they will do it at a loss at least of twenty-four Representatives the other House of Congress, according to the rule established by the act of 1850. I repeat, that if they shall persist in refusing suffrage to the colored race, if they shall persist in excluding that whole race from the right of suffrage, they will lose twenty-four members of the other House of Congress. Some have estimated their loss more and some less; but according to the best calculation I have been able to make, I think that will be the extent. It is not to be disguised — the committee have no disposition to conceal the fact — that this amendment is so drawn as to make it the political interest of the once slaveholding States to admit their colored population to the right of suffrage. The penalty of refusing will be severe. They will undoubtedly lose, and lose so long as they shall refuse to admit the black population to the right of suffrage, that balance of power in Congress which has been so long their pride and their boast.

It will be observed, however, that this amendment does not apply exclusively to the insurgent States, nor to the slaveholding States, but to all States without distinction. It says to all the States, "If you restrict suffrage among your people, whether that people be white or black or mixed, your representation in Congress shall be reduced in proportion to that restriction." It holds out the same penalty to Massachusetts as to South Carolina, the same to Michigan as to Texas.

Mr. CLARK. If the Senator will pardon me for a moment, I wish to inquire whether the committee's attention was called to the fact that if any State excluded any person, say as Massachusetts does, for want of intelligence, this provision cuts down the representation of that State.

Mr. HOWARD. Certainly it does, no matter what may be the occasion of the restriction. It follows out the logical theory upon which the Government was founded, that numbers shall be the basis of representation in Congress, the only true, practical, and safe republican principle. If, then, Massachusetts should so far forget herself as to exclude from the right of suffrage all persons who do not believe with my honorable friend who sits near me [Mr. Sumner] on the subject of negro suffrage, she would lose her representation in proportion to that exclusion. If she should exclude all persons of what is known as the orthodox faith she loses representation in proportion to that exclusion. No matter what may be the ground of exclusion, whether a want of education, a want of property, a want of color, or a want of anything else, it is sufficient that the person is excluded from the category of voters, and the State loses representation in proportion. The principle applies to every one of the States in precisely the same manner. And, sir, the true basis of representation is the whole population. It is not property, it is not education, for great abuses would arise from the adoption of the one or the other of these two tests. Experience has shown that numbers and numbers only is the only true and safe basis; while nothing is clearer than that property qualifications and educational qualifications have an inevitable aristocratic tendency — a thing to be avoided.

Mr. STEWART. I wish to call the attention of the Senator to the word "abridged" before he passes from that branch of the subject. I should like to understand the operation intended by that expression.

Mr. HOWARD. The word "abridged" I regard as a mere intensitive, applicable to the preceding sentence, "but whenever, in any State, the elective franchise shall be denied to any portion of its male citizens not less than twenty-one years of age, or in anyway abridged" to any portion of its male citizens not less than twenty-one "except for participation in rebellion or other crime, the basis of representation in such State shall be reduced in the proportion which the number of such male citizens" — that is, the number of citizens as to whom it is either denied or abridged — "shall bear to the whole number of male citizens not less than twenty-one years of age."

I suppose it would admit of the following application: a State in the exercise of its sovereign power over the question of suffrage might permit one person to vote for a member of the State Legislature, but prohibit the same person from voting for a Representative in Congress. That would be an abridgment of the right of suffrage; and that person would be included in the exclusion, so that the representation from the State would be reduced in proportion to the exclusion of persons whose rights were thus abridged.

Mr. STEWART. Take a case of this kind: suppose that in the South they should allow the negroes to vote who had been in the Army, or who had educational qualifications; would those who did vote be included in the basis of representation, or would that be an abridgment of that class of persons so that they would all be excluded?

Mr. HOWARD. It is not an abridgment to a caste or class of persons, but the abridgment or the denial applies to the persons individually. If the honorable Senator will read the section carefully I think he will not doubt as to its true interpretation. It applies individually to each and every person who is denied or abridged, and not to the class to which he may belong. It makes no distinction between black and white, or between red and white, except that if an Indian is counted in he must be subject to taxation.

But as to the principle of representation, I beg to call the attention of Senators to two passages which I will read from the Writings of Mr. Madison, whose reflections upon the right of suffrage were at once the most enlightened and profound, to show what were his ideas respecting the right of suffrage and the persons to whom it ought to be granted. It applies to this whole subject. They apply as well to the negro as to the white man. Mr. Madison has been discussing the question of confining the right of suffrage to freeholders, and he observes:

"Confining the right of suffrage to freeholders and to such as hold an equivalent property, convertible, of course, into freeholds. The objection to this regulation is obvious. It violates the vital principle"—

Here my honorable friend from Massachusetts will observe what I regard as the vital principle of republican government; it is not representation because of taxation; it is this—

"the vital principle of free government, that those who are to be bound by the laws ought to have a voice in making them."

That is the point; that those who are to be bound by the laws ought to have a voice in making the laws.

Mr. JOHNSON. Does the honorable member read from Madison's Writings?

Mr. HOWARD. The fourth volume of Madison's Writings, page 25.

Mr. SUMNER. Is that applicable to all without distinction of color?

Mr. HOWARD. Certainly it is, and whether they can read and write or not. The point is that the person who is bound by the laws in a free Government ought to have a voice in making them. It is the very essence of republican government. Again he observes, page 27:

"Under every view of the subject it seems indispensable"—

I wish the attention of my honorable friend from Maryland to this, for I know how much he reverences the character and talents of James Madison—

"Under every view of the subject"

"Every view of the subject," not a partial view, but every view which had presented itself or could present itself to the mind of that great man—

"it seems indispensable that the mass of citizens should not be without a voice in making the laws which they are to obey, and in choosing the magistrates who are to administer them. And if the only alternative be between an equal and universal right of suffrage for each branch of the Government, and a confinement of the entire right to a part of the citizens, it is better that those having the greater interest at stake, namely, that of property and persons both, should be deprived of half their share in the Government, than that those having the lesser interest, that of personal rights only, should be deprived of the whole."

Now, apply that great principle as broadly as it is laid down by Mr. Madison on the page from which I have

read, and how can any man of true republican feeling, attached to the essential principles of our system of government, refuse the right of suffrage to the whole negro population as a class?

Mr. JOHNSON. Females as well as males?

Mr. HOWARD. Mr. Madison does not say anything about females.

Sir. JOHNSON. "Persons."

Mr. HOWARD. I believe Mr. Madison was old enough and wise enough to take it for granted there was such a thing as the law of nature which has a certain influence even in political affairs, and that by that law women and children were not regarded as the equals of men. Mr. Madison would not have quibbled about the question of women's voting or of an infant's voting. He lays down a broad democratic principle, that those who are to be bound by the laws ought to have a voice in making them; and everywhere mature manhood is the representative type of the human race.

I have but very little to say, Mr. President, as to the third section of this amendment. It reads as follows:

Sec. 3. Until the 4th day of July, in the year 1870, all persons who voluntarily adhered to the late insurrection, giving it aid and comfort, shall be excluded from the right to vote for Representatives in Congress and for electors for President and Vice President of the United States.

It is due to myself to say that I did not favor

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this section of the amendment in the committee, I do not believe, if adopted, it will be of any practical benefit to the country. It will not prevent rebels from voting for members of the several State Legislatures. A rebel, notwithstanding this clause, may vote for a member of the State Legislature. The State Legislature may be made up entirely of disloyal elements, in consequence of being elected by a rebel constituency. That Legislature when assembled has the right, under the Constitution, to appoint presidential electors itself if it shall choose to do so, and to refuse to refer that question to the people. It is the right of every State. It is very probable that the power of the rebel States would be used in exactly that way. We should therefore gain nothing as to the election of the next or any future President of the United States. Rather than this, I should prefer a clause prohibiting all persons who have participated in the rebellion, and who were over twenty-five years of age at the breaking out of the rebellion, from all participation in offices, either Federal or State, throughout the United States. I think such a provision would be a benefit to the nation. It would ostracize the great mass of the intelligent and really responsible leaders of the rebellion.

Mr. CLARK. I will state to the Senator that I have drawn an amendment something of this kind, which I will read, to see how it would meet his view, if he will permit me at this time:

That no person shall be a Senator or Representative in Congress or permitted to hold any office under the Government of the United States who, having previously taken an oath to support the Constitution thereof, shall have voluntarily engaged in any insurrection or rebellion against the United States, or given aid or comfort thereto.

That would exclude all those who had taken an oath to support the Constitution of the United States, thereby acknowledged their allegiance to that Government, and had proved false to that oath by joining the rebellion.

Mr. HOWARD. I am by no means sure that I should not be quite willing to support such an amendment as that suggested by the honorable Senator from New Hampshire.

Mr. JOHNSON. Will the honorable member from New Hampshire inform me whether he proposes to offer that as an amendment?

Mr. CLARK. That was my idea in drawing it.

Mr. HOWARD. The fourth section of this amendment declares that

Neither the United States nor any State shall assume or pay any debt or obligation already incurred, or which may hereafter be incurred, in aid of insurrection or of war against the United States, or any claim for compensation for loss of involuntary service or labor.

I take it for granted that no member of this body would oppose the adoption of this section of the amendment. I do not believe the people of the United States will object to declaring that the whole of the rebel debt shall be eternally repudiated and extinguished — a debt contracted in the prosecution of the most wicked war with which the earth was ever cursed, against a Government that was never felt by them except in the benefits it conferred. Such a debt can never be assumed or paid by the loyal people of the United States, and if suffered to remain in quasi existence it can only be left in that condition as a subject of political squabbling and party wrangling.

The assumption of the rebel debt would be the last and final signal for the destruction of the nation known as

the United States of America. Whatever party may succeed in so wicked a scheme, by whatever name it may be called and under whatever false guises or pretenses it may operate, if it succeed in assuming this indebtedness, puts an end first to the credit of the Government, and then, as an unavoidable consequence, to the Government itself. I do not propose to spend time upon this branch of the subject. I simply refer to it as a necessity of such magnitude as in my judgment to demand our action and the action of the States of the Union without delay. It is necessary to act, to extinguish this debt, to put it beyond the pale of party controversy, to put it out of sight, and to bury it so deep that it can never again be raised to life in such manner as to become a theme of party discussion. The amount of that debt is probably not less than five billion dollars. We do not know its exact amount, and I am not sure that it is possible ever to ascertain it; but if there should ever be a fair prospect of its assumption by the United States or by the States it is perfectly certain that the evidences of it would multiply thicker than the leaves in Vallombrosa. Those evidences are a great curiosity in the history of commercial affairs. I hold in my hand a specimen of the confederate currency. I will read it for the information of Senators and to give it a permanent registration among our proceedings:

Richmond, December 1, 1862. No. 81413.

Six months after the ratification of a treaty of peace between the Confederate States and the United States of America, the Confederate States of America will pay to the bearer on demand \$100.

Signed by the Treasurer and countersigned by the Register of the Confederate States of America, at Richmond.

Such is the kind of commercial security upon which the rebellion was chiefly waged against us. The confederacy issued its promises payable six months after a treaty of peace should be ratified between these States and the United States. I hardly think that in a lawyer's office that would be regarded as negotiable paper. I doubt very much whether the bearer of such a security would be able to sue upon it, even in a court of South Carolina. It is payable not exactly upon the happening of a contingency, but upon the happening of what is and ever will be a total impossibility. "Six months after a treaty of peace." It is not yet due, and of course never will become due. It was never expected to become due by any man who had a thimble-full of brains; but was used as part of that vast system of humbug, deception, and imposture by which the southern people were deluded. Their bogus government never expected to pay it.

Sir, the peace of the country ought not to be disturbed or jeopardized by the agitation of any such question as the assumption of the rebel debt. It becomes the character and dignity of the Government, which has spent so much of treasure and blood in putting down this wicked rebellion, to give an assurance to the people of the United States, whether loyal or disloyal, and to all the people of the civilized world, that this rebel debt thus contracted is never to be paid, that it shall never be recognized as the foundation of any claim or any contract whatever; and such an assurance will be also an especial compensation to the holders of the "cotton loan" in England, which has created so much sensation both on the other side of the Atlantic and on this. I confess I am not without a little anxiety on this point. I wish to give those martyrs to the cause of the "confederate States of America," those who so generously lent that mushroom government their cold cash upon the promises contained in the cotton bonds, a final assurance as to the real value of their securities, and that they are never to look to the United States or to any State of the Union for indemnity on account of moneys advanced by them in the piratical scheme of destroying the Government of the United States. Sir, I do not believe in paying traitors, nor do I believe in indemnifying men abroad who, with their eyes open and a malignity in their heart beyond all parallel, gave them aid and comfort. Nor do I see the propriety of keeping this question open before the country, and enabling the foreign holders of cotton bonds to keep the political atmosphere of this country in a turmoil for the future with a view ultimately of getting their pay from somebody. It is time for us to put our hands upon this whole thing and to extinguish all hope.

The next clause is a very simple one. I have already remarked upon it; and shall spend no more time upon it. It gives to Congress power to enforce by appropriate legislation all the provisions of this article of amendment. Without this clause, no power is granted to Congress by the amendment or any one of its sections. It casts upon Congress the responsibility of seeing to it, for the future, that all the sections of the amendment are carried out in good faith, and that no State infringes the rights of persons or property. I look upon this clause as indispensable for the reason that it thus imposes upon Congress this power and this duty. It enables Congress, in case the States shall enact laws in conflict with the principles of the amendment, to correct that legislation by a formal congressional enactment.

Mr. WADE. I move to amend the joint resolution by striking out all after the word "article" in line eight, and substituting the proposition which I send to the Chair to be read.

The Secretary read the words proposed to be inserted, as follows:

Sec. 1. No State shall make or enforce any law which shall abridge the privileges or immunities of persons born in the United States or naturalized by the laws thereof; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sec. 2. No class of persons as to the right of any of whom to suffrage discrimination shall be made, by any State, shall be included in the basis of representation, unless such discrimination be in virtue of impartial qualifications founded on intelligence or property, or because of alienage, or for participation in rebellion or other crime.

Sec. 3. The public debt of the United States, including all debts or obligations which have been or may hereafter be incurred in suppressing insurrection or in carrying on war in defense of the Union, or for payment of bounties or pensions incident to such war and provided for by law, shall be inviolable. But debts or obligations which have been or may hereafter be incurred in aid of insurrection or of war against the United States, and claims of compensation for loss of involuntary service or labor, shall not be assumed or paid by any State nor by the United States.

Sec. 4. The Congress shall have power to enforce by appropriate legislation the provisions of this article.

Mr. WADE. I do not rise now for the purpose of arguing this question at any length; and it is with very great deference that I offer an amendment to the proposition reported by the committee who have had this particular subject under consideration so long. I know that they are infinitely more competent than I am to deal with it; but there are so many conflicting views in regard to this whole matter, and it is so vitally important to the interests of the country that we get the proposition upon which we shall unite as near right as we can, that after all it seems to me to be proper that every Senator who believes he can by possibility improve the plan which has been brought forward by the committee should offer his amendment for the consideration of the body. I do not know that the proposition which I have now submitted will be deemed an improvement upon what they have brought forward; but nevertheless there are some things in it that appear to me to be better, and an improvement upon their report.

In the first section of the proposition of the committee, the word "citizen" is used. That is a term about which there has been a good deal of uncertainty in our Government. The courts have stumbled on the subject, and even here, at this session, that question has been up and it is still regarded by some as doubtful. I regard it as settled by the civil rights bill, and, indeed, in my judgment, it was settled before. I have always believed that every person, of whatever race or color, who was born within the United States was a citizen of the United States; but by the decisions of the courts there has been a doubt thrown over that subject; and if the Government should fall into the hands of those who are opposed to the views that some of us maintain, those who have been accustomed to take a different view of it, they may construe the provision in such a way as we do not think it liable to construction at this time, unless we fortify and make it very strong and clear. If we do not do so

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there may be danger that when party spirit runs high, it may receive a very different construction from that which we would now put upon it. I find that gentlemen doubt upon that subject, and I think it is very easy now to solve that doubt and put the question beyond all cavil for the present and for the future.

In the first clause of the amendment which I have submitted, I strike out the word "citizens," and require the States to give equal rights and protection of person and property to all persons born in the United States or naturalized under the laws thereof. That seems to me to put the question beyond all doubt.

The Senator from Maine suggests to me, in an undertone, that persons may be born in the United States and yet not be citizens of the United States. Most assuredly they would be citizens of the United States unless they went to another country and expatriated themselves, if they could do so by being adopted in that other country by some process of naturalization that I know nothing about; for I believe the countries of Europe — certainly it is so in England — have always held that a person born within the realm cannot expatriate himself and become a citizen of any other country or owe allegiance to any other country. I think, then, the first section of my amendment covers the whole ground.

Mr. FESSENDEN. Suppose a person is born here of parents from abroad temporarily in this country.

Mr. WADE. The Senator says a person may be born here and not be a citizen. I know that is so in one instance, in the case of the children of foreign ministers who reside "near" the United States, in the diplomatic language. By a fiction of law such persons are not supposed to be residing here, and under that fiction of law their

children would not be citizens of the United States, although born in Washington. I agree to that, but my answer to the suggestion is that that is a simple matter, for it could hardly be applicable to more than two or three or four persons; and it would be best not to alter the law for that case. I will let it come under that well-known maxim of the law, *de minimis lex non curat*. It would make no difference in the result. I think it better to put this question beyond all doubt and all cavil by a very simple process, such as is the language of the first section of the amendment I have offered. I do not know that the corresponding section reported by the committee would leave the matter very doubtful; but that which I have proposed is beyond all doubt and all cavil now and hereafter, and it is as easy to adopt it as it is the other. I regard it as an improvement, and therefore I think it ought to be adopted.

The second section is in regard to the apportionment of representation; and here I like the provision I have proposed better than the corresponding one of the committee. There is no doubt or cavil about it; and it contains some elements which I think make it entirely preferable to the other proposition. There are some reasons, and many believe there are good reasons, for restricting universal suffrage, and upon such principles as not to justify the inflicting of a punishment or penalty upon a State which adopts restricted suffrage. It is already done in some of the New England States — in Massachusetts, for instance. I believe the constitution of that State restricts the right of suffrage to persons who can read the Constitution of the United States and write their names. I am not prepared to say that that is not a wise restriction. At all events, a State has the right to try that experiment; but if she tries it, under the report of the committee she must lose, in the proportion that she has such persons among her inhabitants, her representation in Congress. I do not think that ought to be so. I think we should leave the subject open to the State to act as they see fit about it. I think my amendment in this respect is plainer and more practicable than the proposition of the committee. The entire population is taken in the first instance, as a basis. The census always discriminates between the black and the white population, and it makes several other discriminations; and therefore it is, and will be at all times, perfectly easy and practicable to ascertain exactly how much of the population of a State shall be counted in the basis of representation under my amendment. Under the other proposition, it seems to me, you must have a census commission all the time in operation in order to keep pace with the variations that will take place from time to time.

Under this amendment you ascertain the classes of the population, and when any discrimination shall be made upon any of these subjects the whole of that particular class will be excluded. There is only one question to be determined. If the exclusion is because of race or color, the question is what amount of colored population is there in the State, and in exactly that proportion she is to lose representation. If any class is deprived of the privilege of voting there should certainly be some restriction on the representation of the State which excludes them. In that particular I think my amendment is a great improvement on the provision reported by the committee. My amendment is such that a calculation can very easily be made of what the restriction of representation is under it. I have not myself calculated it; but we know that some of the States would lose more than half their representation; South Carolina would, and I think Mississippi would, and some other of the States would lose largely if they excluded their colored population from voting; and I think they ought to be restricted in the proportion that the excluded portion bear to the whole.

In the next place, my amendment prohibits and renders null and void all obligations incurred in rebellion and insurrection against the United States or for the purpose of aiding rebellion or insurrection; and in that particular it is precisely the same as the corresponding section of the original proposition which was so eloquently defended and enforced by the Senator from Michigan. I agree with all that he said on that subject, and the proposition reported by his committee and the one I have submitted are the same in that respect; but then my amendment goes to another branch of this business almost as essential as that. It puts the debt incurred in the civil war on our part under the guardianship of the Constitution of the United States, so that it Congress cannot repudiate it. I believe that to do this will give great confidence to capitalists and will be of incalculable pecuniary benefit to the United States, for I have no doubt that every man who has property in the public funds will feel safer when he sees that the national debt is withdrawn from the power of a Congress to repudiate it and placed under the guardianship of the Constitution than he would feel if it were left at loose ends and subject to the varying majorities which may arise in Congress. I consider that a very beneficial provision, which is not in the original proposition.

This section of my amendment goes further, and secures the pensioners of the country. We ought to do something to protect those wounded patriots who have been stricken down in the cause of their country, and to put the security of their pensions and their means of support beyond the power of wavering majorities in Congress, who may at some time, perhaps, be hostile to the soldier. In the condition of things around us we have no great guarantee now that rebels will not ere long be in these Halls, deadly hostile to everything that shall benefit the soldier who was used as an instrument in their downfall and their conquest. Let the policy which I

understand to be that now prevailing at the other end of the avenue be adopted, and we have no security and no guarantee that the widow of your dead soldier, who died in the cause of his country, will not be deprived of the pittance that we give her as a support. I am anxious to put the pensions of our soldiers and their widows and children under the guardianship of the Constitution of the United States. They ought to be there, along with your public debt. I think no gentleman will deny that it is very essential that the debt incurred in this war should be placed under the protection of the Constitution of the United States, especially when we are now prosecuting a doubtful war with your Executive as to whether open and hostile rebels shall not have seats in Congress. If they are admitted here to act with their sympathizers at the North, who have constantly opposed every policy that looked to the remuneration of those engaged in the war on our part, who have been opposed to every war measure, who voted against paying your Army in the field, or doing anything to defend the country, what will be the result? Under the dictation of such a policy, should it prevail, who can guaranty that the debts of the Government will be paid, or that your soldiers and the widows of your soldiers will not lose their pensions? I hope that whether my amendment be adopted or not, any amendment to the Constitution which shall finally prevail will contain a clause like this.

Mr. President, I have stated nearly all the differences between my amendment and the proposition of the committee. I have left out of the amendment the third section of the resolution, because as the Senator from Michigan has said it does not seem to me to amount to much. Practically I do not believe it would have any effect. I am for excluding those who took any leading part in the rebellion from exercising any political power here or elsewhere now and forever; but as that clause does not seem to effect that purpose, and will probably effect nothing at all. I do not think it is of any consequence that it should have a place in the measure. I hope another clause will be placed there by the amendment suggested by the Senator from New Hampshire. I shall be very glad to see that adopted either as an amendment to my proposition, if it should prevail, or, if not, as an amendment to the original proposition.

I have seen other suggested amendments which I should like to have prevail. The Senator from Nevada [Mr. Stewart] has submitted a proposition which in my judgment is of the most important and essential character. Could my voice and my vote prevail to give efficacy to his proposition, he should not fail to have it. I am for suffrage to our friends in the South, the men who have stood by us in this rebellion, the men who have hazarded their lives and all that they hold dear to defend our country. I think our friends, the colored people of the South, should not be excluded from the right of voting, and they shall not be if my vote and the votes of a sufficient number who agree with me in Congress shall be able to carry it. I do not agree in this particular with the Senator from Michigan. He yields to the provision in the committee's resolution on the subject reluctantly, because he does not believe three fourths of the States can be got to ratify that proposition which is right and just in itself. My own opinion is that if you go down to the very foundation of justice, so far from weakening yourself with the people, you will strengthen yourself immensely by it; but I know that it is not the opinion of many here, and I suppose we must accommodate ourselves to the will of majorities, and if we cannot do all we would, do all we can. I propose for myself to contend for all I can get in the right direction, and finally to go with those who will give us anything that is beneficial. That is my doctrine. I wish and I hope that on due reflection the Senate will adopt the amendment of the Senator from Nevada, at least as an alternative to some of these propositions, leaving the States to take his proposition if they will in lieu of the one we give to them. I should like to see even that, for I believe they would take his in preference to the one we shall probably give them.

But, sir, notwithstanding I say all this, I am not finding fault with the doings of the com- .

mittee. I know the difficulties of their task. I know the great variety of opinions that prevail on this subject. I know its importance. I know that the committee has been most unreasonably assailed from outside because it has not earlier brought forth its measures. My only wonder is that they could finish their labors and bring forward these propositions one after another as they have done, and so satisfactorily as they have. When I offer this amendment of mine, I only do it for the consideration of the Senate, and not because I have the vanity to suppose that I could improve anything they had agreed upon. It may be that after men have struck out a course of proceeding, have broken the road, and submitted their doings to us, it is easy to criticise and sometimes easy to amend. That is all I claim. I do not suppose that if I had been on the committee I could have drawn up a proposition so good as this is that they have brought forward; and yet it seems to me, having the benefit of what they have done, that looking it over, reflecting upon it, seeing all its weak points, if it have any, I could, without having the ability of that committee, suggest amendments that would be beneficial. I trust I have done so, or

certainly I would not have brought this forward. If it meets the approval of the Senate I shall be glad, because to me it seems to be better; but if not, I shall go for their proposition. All I wished to do now was barely to bring my amendment before the Senate and submit it for their consideration. Hereafter, perhaps, I may or may not have something more to say about it.

Mr. WILSON. If the Senator from Ohio intends to press this amendment to a vote I trust he will consent to some modification of it. In the second section I think the word "property" should be stricken out. That section reads, "no class of persons as to the right of any of whom to suffrage discrimination shall be made by any State shall be included in the basis of representation, unless such discrimination be in virtue of impartial qualifications founded on intelligence or property, or because of alienage, or for participation in rebellion or other crime." I certainly think we ought not to put the word "property" as a qualification for suffrage in this country into the Constitution of the United States. If we are to have anything of that kind I think it should be a qualification on account of taxation, not on account of property, but taxation, paying a proportionate part to support the Government. I do not think such a qualification as this should go in the Constitution, and I cannot vote for this proposition as against the proposition of the committee. Then there are words in the third section that I think should be stricken out. Those words are, "and shall not be taxable by any State."

Mr. WADE. Those words are not in the amendment I have offered. They were in the amendment as first submitted and printed, but they are stricken out of the amendment as now offered.

Mr. FESSENDEN. I think the proposition had better be printed as it now stands amended.

Mr. WADE. Very well.

Mr. WILSON. I am very glad that the Senator from Ohio has stricken out those words which were in his original amendment. I wish simply to say upon that point, that for one, I can consent to vote for no proposition that does not go squarely to the country, that the national debt hereafter created shall be taxed like all other property. I do not believe in the wisdom of having two or three thousand millions of capital in this country placed beyond taxation. We did it in time of war, in an hour of need. I will adhere to that with all fidelity. It is as sacred as any pledge we ever made, as sacred as the blood of our soldiers. But I will consent to no measure that change, one dollar of that property into a new loan, and does not subject it to taxation equally and like all other property. I believe the safety of the debt itself demands that.

Mr. WADE. Nothing more need be said about taxation, for that is not in the amendment I have offered. It was in the printed copy I first submitted; but on consideration I struck that out, thinking the amendment would be better without it, more acceptable to the Senate, and certainly more acceptable to myself. As to the suggestion of the Senator from Massachusetts that the word "property" should be stricken out I will say that there is no member of the Senate more opposed to making a property qualification for voting than I am. I never would vote for it nor submit to it if I could help it. But it is presented here only as one of those alternatives which the States may adopt. Some of them have adopted it before, and may do so again. It is only to be left optional with them to do this and other things. We do not recommend that they should do it; we do not recommend even an educational basis; we simply present the matter to the States. As a general thing the bias of my mind is entirely in favor of free suffrage to every man who is subject to the laws, in the language of Madison. That is the principle which would govern me if the matter were left to me; but we are now legislating with regard to the States, giving them a right to fix this matter for themselves.

If the State of which I am a member, where I could reach it, should undertake to prescribe a property qualification, you would find me opposed to it all the time. I am not very averse to an amendment of my proposition which shall strike out the word "property." I simply thought it would be as well to leave that matter to the States and not to restrict their representation if they should adopt a property qualification applied to all, giving equal suffrage, making no class discrimination. I am not very much opposed to striking out the word "property;" I should not like to lose a vote for my amendment on that account, although I did not suppose it was placed in my amendment in such a position as to subject me to the suspicion of being in favor of the property qualification. If the Senate is opposed to it, I am perfectly willing that that word shall be stricken out, as I think it can be without mutilating my amendment. I now move that the amendment be printed in the form in which I have submitted it.

The motion was agreed to.

Mr. WILSON. As amendments are being offered, I desire to submit an amendment, for the purpose of having it printed, to the second section of the article reported by the committee, and also an amendment to the third section.

Mr. JOHNSON. I ask for the reading of them.

The Secretary read the amendment proposed by Mr. Wilson to the second section, which was to strike out the

section and in lieu of it to insert the following words:

Representatives shall be apportioned among the several States according to their respective numbers; but if in any State the elective franchise is or shall be denied to any of its inhabitants, being male citizens of the United States, above the age of twenty-one years, for any cause except insurrection or rebellion against the United States, the basis of representation in such State shall be reduced in the proportion which the number of male citizens so excluded shall bear to the whole number of male citizens over twenty-one years of age.

Mr. WILSON. Before the other amendment is read, I wish to state in a single word the distinction between the proposition just read and the section of the committee's proposition for which it is offered as a substitute. In the original proposition the language is "citizens of the State," in this it is "inhabitants being male citizens of the United States." I think the distinction is of vital importance. Now, let the Secretary read my other proposition.

The Secretary read the proposed amendment, which was to strike out section three, and in lieu of it to insert the following:

That no person who has resigned or abandoned or may resign or abandon any office under the United States, and has taken or may take part in rebellion against the Government thereof, shall be eligible to any office under the United States or of any State.

Mr. WILSON: I will simply say in regard to this proposition which I desire to have printed, that I am in favor of striking out the third section of the proposition of the committee, and I prefer simply to strike it out rather than to insert anything in place of it; but I submit this motion so that if we are to have anything inserted in its place, we shall give the people an opportunity of voting upon a proposition which says that the men who resigned or abandoned offices under the Government of the United States, whether civil or military, and engaged in rebellion, shall never hold any office under the Government of the United States, or under any State.

Mr. FESSENDEN. I wish to suggest to my friends that if they desire to offer amendments it would be better to move each amendment separately, either in the place of some section in the resolution reported by the committee, or as an addition. The difficulty of presenting propositions together as a substitute for the whole is that we are compelled to vote upon them as a whole. If a Senator wishes to substitute one provision for another, let that be a motion distinct by itself.

Mr. WILSON. Mine is.

Mr. FESSENDEN. But the honorable Senator from Ohio has moved a substitute for all the five sections of the article reported by the committee. Perhaps I might vote for some one of the sections he proposes, but I cannot for all together. The purpose can be accomplished by simply moving one section as a substitute for another, or by offering his amendments as additional provisions.

Mr. WADE. Well, I can take that course.

The PRESIDING OFFICER, (Mr. Hendricks in the chair.) But one of the amendments proposed by the Senator from Massachusetts is now in order. The Chair understands the Senator, however, to propose his two amendments simply with a view of their being printed. Is there any objection to the reception of both amendments with a view to their being ordered to be printed?

Mr. CLARK. I suppose these amendments are all offered for the purpose of bringing them to the knowledge of the Senate and having them printed, and that no rule of the body will be enforced upon them.

The PRESIDING OFFICER. If that be the unanimous wish of the Senate, it will be so ordered.

Mr. CLARK. I propose to offer as an amendment to the third section the proposition which I read some time ago to the Senate, but it would not be in order for me to do so now if any rule of the Senate was to be enforced upon it. I desire to offer an amendment to the third section, for the purpose of having it printed.

The PRESIDING OFFICER. If there be no objection the order will first be made to print the amendments submitted by the Senator from Massachusetts. The Chair hears no objection.

Mr. CLARK. I desire to offer this as a substitute for the third section of the committee's resolution:

No person shall be a Senator or Representative in Congress, or be permitted to hold any office under the Government of the United States, who, having previously taken an oath to support the Constitution thereof, shall have voluntarily engaged in any insurrection or rebellion against the United States, or given aid or comfort thereto.

I wish also to propose an amendment to the section in regard to the rebel debt, in these words:

Debts incurred in aid of rebellion or war against the United States are illegal and void shall not be enforced in any court, or assumed or paid by the United States or any State, or by its authority; nor shall any compensation ever be made for the loss or emancipation of any slave.

I prefer to make the provision in regard to the rebel debt a little more specific and to go a little further. I am not content to say that it shall not be paid by the United States or any State, but I want to say that it shall not be enforced in any court, either in an action or by way of set-off; nor shall any debt incurred by any city or municipal corporation in aid of rebellion ever be paid. I do not want that any citizen of my State or any citizen of any other

loyal State who shall go down into that country shall ever be taxed to pay one cent of the rebel debt, and I want to say to the world that every particle of it is to be forever repudiated and remain unpaid, that we will not acknowledge it or suffer any of our courts to enforce it.

Mr. JOHNSON. Was the first amendment of the Senator proposed as a substitute for the third section?

Mr. CLARK. Yes, sir. The third section does not seem to be satisfactory to a great many persons, and yet I think something of the kind, looking toward the exclusion of many of those who participated in the rebellion from participation in the administration of our Government, is desirable. The section as it stands in the committee's plan provides that no person who has been engaged in the rebellion shall be allowed to vote until 1870. That is about four years off. Now, it will probably be a year and a half before this amendment can be agreed to by the States; they will be allowed to have until that time; and then it will only be an exclusion for a couple of years. I am afraid that the obstruction they will make to the adoption of the plan will be more serious than all the advantage we can derive from it. I much prefer that you should take the leaders of the rebellion, the heads of it, and say to them, "You never shall have anything to do with this Government," and let those who have moved in humble spheres return to their loyalty and to the Government.

Mr. HOWARD. Allow me to suggest to the Senator from New Hampshire, by way of amendment to the amendment offered by him to the third section, that he strike out the word "voluntarily," so as to exclude that class of persons absolutely without qualification.

Mr. CLARK. I shall have no objection to any amendment of that kind.

Mr. HOWARD. Any person who has taken an oath to support the Constitution as a member of Congress or as a Federal officer must be presumed to have intelligence enough if he entered the rebel service to have entered it voluntarily. He cannot be said to have been forced into it by pressure; but as the amendment of the honorable Senator now stands it leaves open as a question of fact whether he actually entered the rebel service voluntarily or involuntarily.

Mr. CLARK. I will adopt the suggestion of the Senator from Michigan, and I will adopt any other suggestion that seems proper in regard to this amendment. I throw it out merely as a general idea or proposition. It may not be satisfactory to all minds; it may need amendment; it may possibly go too far; but I throw it out to the Senate and desire to have it printed as embracing a general proposition the main feature of which I think should be agreed to, and as a substitute for the third section proposed by the committee.

Mr. HOWARD. I am inclined to think I will support that amendment with that modification.

Mr. CLARK. I do not propose further to discuss the subject, but submit the amendment and ask that it be printed.

The PRESIDING OFFICER. The amendment proposed by the Senator from New Hampshire will be printed, unless there be objection.

Mr. BUCKALEW. I desire also to submit an amendment with a view to have it printed.

The PRESIDING OFFICER. The Chair will receive the amendment and an order will be entered for its printing if there be no objection.

The amendment of Mr. Buckalew is to add to the resolution the following additional section:

Sec. 6. This amendment shall be passed upon in each State by the Legislature thereof which shall be chosen, or the members of the most popular branch of which shall be chosen next after the submission of the amendment, and at its first session; and no acceptance or rejection shall be reconsidered or again brought in question at any subsequent session; nor shall any acceptance of the amendment be valid if made after three years from the passage of this resolution.

EXECUTIVE SESSION.

Mr. GRIMES. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and after some time spent in executive session the doors were reopened, and the Senate adjourned.

RECONSTRUCTION.

The Senate, as in Committee of the Whole, resumed the consideration of the joint resolution (H. R. No. 127) proposing an amendment to the Constitution of the United States, the pending question being on the amendment offered by Mr. WADE.

Mr. STEWART. Mr. President, I am satisfied that it is impossible for this Congress to fully agree as to what is expedient to be done to harmonize factions and restore peace to our distracted country. Every one is liable to estimate the sentiments of the whole country by the views of a few friends or a small portion of his constituents, modified by his own peculiar ideas and wishes. This has and will continue to produce an irreconcilable conflict of opinions upon all questions of mere expediency. There is very little difference of opinion among Union men as to what ought to be done if we had the power to do it. I have always been of the opinion that it was expedient to do right. In this case we must agree as to what is right and do it, for we cannot agree as to what is expedient or what is likely to return A, B, or C to Congress. The Union party are agreed that all men are entitled to life, liberty, and the pursuit of happiness, and they will indorse any necessary means to secure these inalienable rights to every American citizen. The more direct and positive the plan the better. All digressions from principle or compromises of human rights, whether by Congress or the President, only involve us in new difficulties and increase our embarrassments. The President's plan of restoration was unsatisfactory, because it ignored the rights and excluded from constitutional liberty four million loyal citizens guilty of no offense but fidelity to the Government, and at the same time deprived the friends of the Union of the cooperation of these loyal citizens in maintaining the integrity of the Constitution, the honor of our brave soldiers, and the financial burdens of the war; because it placed the State governments of the South in the hands of the very men who plunged the country into war for secession and the extension of slavery, and because it admitted into Congress an increased representation of the disloyal elements of the rebellion. Yet it was better than no plan, no restoration, no Union, and no peace. The paramount importance of speedy restoration made me hesitate to condemn the plan of the President for want of a better. I was unwilling to pull down without the material at hand with which to rebuild.

But in the progress of events, two noble sentiments became manifest to me upon which the people of the loyal North might unite protection for the Union and the friends of the Union and mercy to a fallen foe. The attainment of these humane objects promised restoration and peace. I reflected seriously upon a solution of our difficulties by an appeal which

addresses itself only to the most Christian qualities of humanity, and examined with great anxiety every plan presented. I found none which promised security for the future and protection for the friends of the Government, and at the same time extended mercy to its enemies. Every proposal was wanting either in justice or mercy. Mercy pleaded generous amnesty; justice demanded impartial suffrage. Both were buried beneath an ocean of prejudice. But the voice of an enlightened press and the arguments of earnest men in Congress inspired me with the hope that a direct proposition for a settlement of the questions at issue might finally succeed. I proposed pardon for the rebels and the ballot for the blacks. The general plan was, and still is, approved by the loyal press with no important exception, while every scheme based upon expediency alone has disappeared like the mist of the morning before the rising sun. Although the advocacy of the resolutions subjected me to some invidious criticisms by persons who judge the motives of others by their own, yet no one has attempted an argument against the humanity and justice of the propositions.

If those who have always entertained the same views upon all subjects cannot vote for my resolution because they think it inconsistent for me to advocate negro suffrage, I shall be satisfied if I can obtain the votes of those only who have held themselves open to conviction and have sometimes changed their opinions. Give me the votes of those who have changed with the progress of events during the last six years, and the balance may vote as they please. Those who, in the language of Mr. Lincoln, "adopt new views whenever they appear to be true views," are the only persons wise or useful in this age of progress. The world moves, and those who do not perceive it are dead to the living issues of the day. I have always advocated the necessity of taking the world as we find it, and following the logic of events. The development of new facts is constantly exploding old theories. The trouble is that some men do not seem to comprehend the new facts. The attempt to apply the theories of slavery to a condition of freedom is the most dangerous evil of the age, yet those who do this boast of their consistency. They were educated to believe that a negro was a slave, possessing no rights that a white man was bound to respect, and they believed it still, and they are astonished at the inconsistencies of the world and its tendency to recognize the

rights of man.

In advocating this plan my only hope of success is predicated upon the principles involved, and although it may receive no favor and few votes now, I am profoundly impressed with the conviction, that if this Union is ever restored, it must be done with impartial suffrage and general amnesty. Gentlemen on all sides freely admit the justice of these principles, but express a fear that the country is not yet prepared to meet the issue. Let us not deceive ourselves; the people understand these questions better than we suppose. The leading minds of the nation have proclaimed from the beginning the doctrine of these resolutions. The people are in advance of Congress in their demands for justice, and in their magnanimous generosity to a vanquished enemy. All they demand is security for the future, and with it they proceed to the work of restoration "with malice toward none, with charity for all." To start right in this matter it is only necessary to adhere to first principles, and constantly bear in mind that—

*"Mankind are all by nature free and equal,
Tis their consent alone gives just dominion."*

Protection and allegiance are reciprocal. It is the duty of the Government to protect; of the subject to obey. Where both these duties are performed by the respective parties, peace and order must follow. Monarchical government is founded upon the idea that the sovereign is the source of all power and the guardian of the rights of the people. Republican government is founded upon the idea that the people are the only source of legitimate authority and the guardians of their own rights through the instrumentality of the ballot. The theory of monarchical government is that the sovereign only can be trusted; the theory of republican government is that the people must be trusted. Monarchical and republican Governments are the only Governments tolerable among men. The mixed forms of oligarchies and aristocracies are only a multiplication of tyrants to prey upon the people. Our fathers established a republican Government on the representative basis, and declared that all power emanated from the people, and that all men were equal in the right to exercise that power in a constitutional way at the ballot-box. But in practice they failed to come up to the high standard of their theory; they even tolerated slavery as an unavoidable evil, and from a supposed necessity ignored all the civil and political rights of the colored men, and even counted him as a chattel. It was a declaration of rights for all men, but a Government for white men only. The theory was good, the practice in this respect fatally defective. Disfranchisement and slavery in a portion of the Republic produced the results which might have been expected. The master exercised, both in the local and General Government, the power belonging to him as a freeman and the power belonging to his slaves. This created an inequality in the beginning. The slaveholder was more powerful than the non-slaveholder. This inequality and violation of republican principles produced arrogance and intolerance on the part of the slaveholding South, and jealousy and hatred on the part of the non-slaveholding North. Free labor was odious to the southern aristocracy, slave labor was still more odious to the Democracy of the North. For a time an effort was made by our statesmen to keep up a balance of power between the slave and non-slaveholding States, and all manner of expedencies were attempted to compromise and reconcile the irrepressible conflict between slavery and freedom, but all to no purpose. Neither felt safe, or, indeed, was safe, while its antagonistic principle existed in the Government. The inevitable conflict came, and after four years of death, carnage, and desolating war, democracy was triumphant, and the aristocratic institutions of the South, based upon slavery and inequality of human rights, were overthrown and utterly crushed. The triumph of arms was complete. The question now presented is, shall the triumph of democratic principles be equally so? There are two great obstacles in the way, both based upon passion and prejudice, and each seems nearly insurmountable. One is hatred of rebels; and a demand that they shall be disfranchised and enslaved — for disfranchisement is slavery. The other is hatred of the negro, and a demand that he shall be disfranchised and robbed of the power of self-protection and virtually re-enslaved. The great mass of the people of the South are either rebels or blacks, and if we yield to either demand the struggle is not ended. The democratic principle of the equality of all men in the right to protect themselves at the ballot-box will still be denied. The party left in power, whether it be black men or white men, will soon display all the meaner qualities of petty despotism, intolerance, arrogance, contempt for labor, and above all a fierce hatred for the democratic protective principle of the equality of man. If we yield to both these demands, and disfranchise both blacks and whites, what will become of our free Government, for which we were willing to sacrifice the last dollar and the last man? I am aware with what effect the argument for disfranchisement of rebels can be urged to the soldier, still heated with the conflict of battle; to the widows and orphans, destitute and sorrowing beneath the afflictions brought upon them by a wicked and cruel rebellion; with the laboring masses of the North, still smarting under the insults heaped by southern aristocracy upon the "mudsill" democracy of the loyal States — in short, with every loyal man who loves the Union and hates its enemies. But it is not the part of

men and Christians to appeal to these most natural sentiments of the human heart unless it be necessary to continue the conflict for the attainment of a great principle. Now is the time to declare for human rights and the equality of man before the law, and if that be still denied no human power can stay the conflict. But can we not now claim that the loyal men of this nation by their valor and by their sacrifices have won not only for themselves but for every man in all this broad land the glorious right of self-government, and that they and their posterity are to reap a rich harvest of blessings as the fruits of the free institutions they have rescued? May we not say to the South, "It was not your young men whose lives we sought, it was not your property we desired to destroy, but we found these sheltering and protecting and hedging about an institution in conflict with human liberty, and in conflict with the Union, and in destroying it we were compelled to overthrow its defenders; but if you have ceased to defend it and war upon the Union we will now cease to harm you?" All we want is justice for all men, and we will become the advocates of mercy for all men and amnesty and forgiveness for the past and a promise of friendship for the future. Let justice and mercy stand together, and the demands of each are satisfied.

The quality of mercy is not strained;
It droppeth as the gentle rain from heaven
Upon the place beneath; it is twice blessed;
It blesseth him that gives and him that takes;
'Tis mightiest in the mightiest: it becomes
'The throned monarch better than his crown;
His scepter shows the force of temporal power,
The attribute to awe and majesty,
Wherein Doth sit the dread and fear of kings;
But mercy is above this sceptered sway;
It is enthroned in the hearts of kings;
It is an attribute to God himself:
And earthly power doth then show likest God's,
When mercy seasons justice."

Let justice be done and then it becomes the duty of every loyal man to invoke mercy even for those who have attempted the destruction of our free institutions. We will then reflect that the South is not alone responsible for slavery and all its woes; that the North and civilized Europe have all played a part in planting this vile institution upon the most favored section of our common country; and that the whole nation has been clothed in sackcloth and ashes for this great crime. When the evil is removed and the rights of man acknowledged we will cease to inquire who is most to blame or who is most guilty, but we will labor to forget the past in view of the bright prospect of universal peace and universal justice. But while the war lasts, whether it be a conflict upon the battlefield or at the ballot-box, all men loyal to equal rights and even-handed justice will be arrayed in fierce antagonism with the enemies of liberty.

But it is said that the negro is ignorant. Grant it. That he is inferior to the white. Grant it. That the great mass of them will not vote intelligently. Grant it. But what are you to do with him? He must either exercise his own political rights or somebody must exercise them for him. You once trusted the duty of exercising both the civil and political rights of the blacks to the whites and it came near destroying every spark of republicanism they ever possessed. It destroyed all their love for democratic institutions, and caused them to make almost superhuman efforts to destroy the best democratic-republican Government ever organized.

It is now a fixed fact that it is not safe to add to the political and social power of the white man the political and social power of the black man. The white man cannot exercise that amount of power and remain a friend of free institutions; hence it becomes a necessity either to destroy the negro so that he shall no longer be a source of power to corrupt the whites, or to trust him with his own political and civil rights. One thing is certain, that the negro must have the ballot or have no friends and being poor and friendless, and surrounded as he is by enemies, his fate is extermination.

But give him the ballot, and he will have plenty of white friends, for the people of the United States love votes and office more than they hate negroes. I need not allude to the kindly feelings the ballot secures for the poor, for you have plenty of illustrations at every election. There are many classes of poor people in the North who would be little better than slaves but for the power of the ballot, before which not only politicians but merchant princes and millionaires tremble; and the mighty Executive of forty million people bows in humble

submission to the omnipotent power of the ballot. In a republic it is mightier than both pen and sword. Before slavery was abolished the master was interested in protecting the slave from ruffianism and violence, but now he has no protection but the sword or the ballot. We will not give him the former. We want no more blood. We must give him the latter or betray him from slavery, not to liberty, but to destruction. We talk of giving equal civil rights, but he answers in the language of the poet—

*"So let them ease their hearts with prate
Of equal rights which men ne'er knew;
I have a love for freedom too."*

Give him the ballot and he will secure his own freedom, which includes all the balance. Freedmen's Bureaus, civil rights bills, are all very well in their way, but very expensive in their operation. They can effect very little in protecting or governing four million people. The government of a Freedmen's Bureau is not self-government, and the sooner we commence to give these people self-government the better. Immediate and universal suffrage may not be wise, but what danger can there be to allow all the negroes to vote with like educational, intellectual, and moral qualifications with the whites hereafter to become voters. If the rising generation of whites are unable to compete on equal terms in these respects with their late slaves, the negro must be regarded as superior. But there is no question of competition in it. It is simply a question of self-protection, and the negro must have the ballot for his own protection, and it must come to this before the conflict will cease. The whites who have been in this rebellion must also have the ballot and full enfranchisement or they must be driven out of the country, for if you retain them here disfranchised enemies, the extraordinary powers necessarily devolved upon the few whom you trust with political rights must make them tyrants. The principle is that a man to be free must exercise political power for himself. If he is not allowed to do this he is a slave. If he is allowed to do more he is to that extent a despot. Every attempt to govern the people of any State by a minority, however loyal that minority may be, is a mockery on republican institutions and will inevitably produce anarchy and discord. We must either abandon our principles or repudiate the idea of dealing with irresponsible minorities and calling them the people. There will be no peace or prosperity in Maryland, Missouri, or Tennessee until the people are enfranchised.

But we are told that if the rebels are allowed to vote those States will fall immediately into disloyal hands; that the power of those States will be used to embarrass the Government and to degrade and persecute loyal men. This is undoubtedly true if the rebels only are enfranchised; but that they will ultimately, and at no distant day, achieve the ballot no sensible man can doubt. In their struggle to obtain this, so necessary for their protection, millions of the American people will sympathize, aid, and approve their efforts, for the principle that a white man (who is allowed to live) ought to vote is too deep-rooted in the nature of the American people to be ignored or repudiated. But they tell us when this is done the life and liberty of every loyal man, both black and white, is in jeopardy. Grant it. Nobody is insane enough to doubt it. But what is the remedy? There are but two: military despotism by the General Government, or an extension of the franchise to the loyal as well as the disloyal; for in each of those States the majority of the whole people are today acknowledged to be loyal; and whether we are in favor of negro suffrage or not is not the question. The question is, shall this Government be in loyal or disloyal hands — in the hands of its friends or the hands of its enemies? It is too late for the Republican party to dodge the issue. There have been too many speeches made in this Congress in favor of negro suffrage to deny that it is a part of the Republican creed. There have been too many votes in this Congress sustaining the principle of suffrage to admit of any doubt of the real design and purposes of the Union party. If we deny our principles the proof of our insincerity will overwhelm us before the people. There is nothing left, if we would have a party, but to affirm and justify our principles. Any attempt to hide them is *prima facie* evidence that they are contraband of political warfare, and subject to confiscation before the tribunal of the people. I was slow in committing myself to the necessity of negro suffrage. My constituents were opposed to it; my education and mode of thinking had been opposed to it; but when I found the Union party committed to it; when I was thoroughly convinced that it alone would protect the negro and redeem the pledge of the Government that he should be free; when I was forced to the conclusion that the fifteen original slave States must shortly be handed over to the enemies of the Government to aid the Democracy in repudiating the national debt, and, perchance, paying the confederate debt, in making loyalty odious and treason honorable, in rewarding traitors and persecuting Union men, unless we extended the ballot to the friends of the Union for our mutual protection, I was resolved to meet the issue, and meet it squarely. Any attempt to conceal our designs will be proof positive of a conscious weakness and a want of faith in the correctness of our principles.

Mr. SAULSBURY. I desire to ask the Senator a question.

Mr. STEWART. I prefer not to be interrupted.

Mr. SAULSBURY. Does the Senator from Nevada say that the Democratic party of this country would, if they had it in their power, repudiate the national debt or would assume the confederate debt? I should like a frank answer. I only refer to it because I observe that the Senator has repeated an intimation which I have seen in the public press.

Mr. STEWART. I will answer the Senator very frankly. For myself, I think there is too much danger to run the risk of giving them the power, and I propose to retain it and not take the chances.

The second section of the constitutional amendment proposed by the committee can be justified upon no other theory than that the negroes ought to vote; and negro suffrage must be vindicated before the people in sustaining that section, for it does not exclude the non-voting population of the North, because it is admitted that there is no wrong in excluding from suffrage aliens, females, and minors. But we say, if the negro is excluded from suffrage he shall also be excluded from the basis of representation. Why this inequality? Why this injustice? For injustice it would be unless there be some good reason for this discrimination against the South in excluding her non-voting population from the basis of representation. The only defense that we can make to this apparent injustice is that the South commits an outrage upon human rights when she denies the ballot to the blacks, and we will not allow her to take advantage of her own wrong, or profit by this outrage. Does any one suppose it possible to avoid this plain issue before the people? For if they will sustain you in reducing the representation of the South because she does not allow the negro to vote, they will do so because they think it is wrong to disfranchise him. Why, then, I ask, will they not sustain you in stopping the wrong at once? Why license the South to outrage equal rights for the small compensation of reduced representation? You do not license murder. Why not? Because it is a crime. Why should you barter away human rights and authorize oppression? Is that no crime?

It is most evident, sir, if we gain a victory at all it will be because the people are satisfied the black loyalist ought to vote; the verdict will be for suffrage. But the verdict will be surplusage. No judgment can be entered on it in favor of human rights. The issue in the pleadings is too narrow. The relief sought cannot be granted. The rebel State governments, with all their local machinery, must at once fall into the hands of the enemies of the Union, and both the black and white loyalists must then be turned over to the tender mercies of a fierce people smarting under a thousand imaginary wrongs and burning with unquenchable vengeance. But you say you will disfranchise the rebels, and the plan of the committee proposes continuance of test oaths, disfranchisements, exclusions from Federal office, &c. The accomplishment of this involves military despotism and the utter destruction of republican institutions in the South. This only aggravates the evils, adds to the calamities of our common country; for, instead of liberating four million blacks, you will have enslaved eight million whites. The President of the United States will become Dictator as well as President — Dictator of eleven States, President of twenty-five. Since it is evident that we must either have disfranchisement and military despotism or enfranchisement and liberty, there can be no doubt of the verdict of the American people. They have had more difficult questions to decide, and have decided on the broad principles of human rights. The united voice of the loyal North demands the opportunity to settle every question that can again disturb the peace or endanger the liberties of the people or the perpetuity of the Union once for all. The patriotic sentiments echoed from the mountains of Switzerland are reechoed from the loyal American heart. Grant impartial suffrage and universal amnesty, and the great work is accomplished. I ask the Secretary to read the Swiss address.

The Secretary read as follows:

Address of the Swiss Conventions (Comites) (of Geneva, Belle, Neufchatel, Tessin, and Berne) in favor of the freedmen, and of the Assembly convoked at Geneva on the 29th March, 1866, by the Genevan Convention.

To the President and Congress of the United States of America:

Mr. President, Messrs. Members of Congress: For four years we have, as it were, lived with you, have borne your grievances, been rendered joyous at your deliverance, and have gloried in your success. When the election of Lincoln announced to the world that you had had enough of the system which abased you, enough of complicity and compromise with slavery, of man-hunting ordained by slavery, of conquests for the profit of slavery, of politics in favor of the party of slavery, we gave thanks to God. When your Union was disrupted by revolt, when your prosperity was crippled, (écroulé,) when many voices had prophesied the dissolution of the Union, we hailed the commencement of a new and a better life for your people.

When military reverses menaced your noble cause, we still believed that it would not perish. When Europe lent, or seemed to lend, an intervention in favor of the South toward violating your blockades and in recognition of the rebel confederacy, we always believed that something would interpose itself between

the design and the execution; that your grand principle would intervene, and through that you would become invincible.

When it was generally believed and said that peace negotiations would render nugatory the moral results of the war, that you would compromise with the prejudices and the institutions of the South, we always believed that you would not lay down your arms until you had destroyed your real enemy, that is to say, slavery. When the death of Lincoln plunged us in mourning, we believed that Lincoln's successor would stake his honor on the continuance and the completion of his work.

Finally, when you have announced to the world that the constitutional amendment was adopted, that already there was no single slave upon the soil of the Union, we have heard within expressible emotion this glorious progress, this greatest event of our age.

It is this sentiment which we would manifest today as a duty. Of slight importance though the testimony may be, it shall not be said that the voice of Switzerland should not make itself heard in your

applause. You have far surpassed the hopes of those who hoped the most. At the same moment in which your trials terminated you pronounced the talismanic word of freedom. It will make itself heard throughout the New World; the Spanish treaty will be suppressed; you will annihilate Brazilian slavery. A whole race suffering in bondage shall be freed at the sound.

These are rare days in the history of mankind, when politics and the Gospel move hand in hand — these days of sunshine unobscured by a cloud.

After such days, in resuming the course of ordinary life, we should guard against dangers from contingencies, and set aside obstacles. To finish is more difficult than to begin; to make sure its application more arduous than the annunciation of a principle.

The labors that await you today are not less important, and are more complex and difficult to surmount than those of yesterday.

But the one goes not without the other. Sad will be the condition of your enfranchised slaves if you make not citizens of them.

Between slavery and liberty — real liberty — there are no breathing-places. Thus, what do the enemies of the Union now predict? That freedom will destroy the freedmen; that, tired of them, you will succumb to the ennui of the fatiguing problem; that you will no longer listen to the voice of the poor negroes; that it will not matter to you whether they remain or depart, whether they live or die; that in the rude contact with your prejudices and contempt they will perish, as the Indians have perished; that your pharisaical abolition will find itself resulting in their extermination; that the pure glory of today will turn to shame on the morrow.

We protest against such dark presages; we ask that they may be branded with falsehood. We know that your acts will so brand them, and very soon.

The more you desire the dark question to cease troubling the United States the more you will feel that it must be disposed of. Unfinished questions have no pity for the repose of mankind. And how shall that completion be attained? But two things remain to be done: to maintain your Freedmen's Bureau and to suppress all civil and political distinctions on account of color. To refuse Federal protection to the slaves that were — a protection indispensable to the transition — is to give them up purely and simply to the laws, the administration, the tribunals of the South. It would be to decree the reestablishment of slavery with the addition of hatred, and, by consequence, of atrocity. To conserve political exclusion to the black race, as a race, would be to deny the principle, even the name, for which the North has so valiantly combated.

That prudent measures should accompany the conferring of the right of suffrage in the South — that, for instance, it should be limited to those who can read and write, without distinction of color — we can well understand. But what we cannot understand, nor can any of those who teach and sustained your cause, is the exclusion of the race. If the southern States were readmitted to Congress without imposing upon them, as a condition, the equality of races, we should bitterly deplore it; we would bow the head in humility and sadness, and await in fear a recommencement of those hostilities between the South and North, between the Republicans and the Democrats, the end of which had seemed only to have come round.

But what would most disturb all our hopes would be to see those freedmen who had spilled their

blood for the defense of the Union rewarded for their devotion by being deprived of those rights which are, in all republican Governments, the appanage of those brave men who are called to bear arms for their country, at the same time that the rebels, who had torn the bosom of their country, and begged the intervention of the foreigner, not only reenjoy the rights they had before the war, but made the arbiters absolute of the fate of loyal citizens. To give to those guilty of high treason the power to reduce good citizens to the position of political pariahs is to reward treachery and to discourage patriotism — to give in to those who pronounced self-government impossible and self-annihilating.

That one condition necessary to future peace should be imposed on the rebel States, the sense, namely, of the above, we doubt not you understand, for you have already imposed upon them an affirmative vote upon the amendment abolishing slavery.

One step more, and your task is finished. By the side of the abolition of slavery it remains to you to equalize the races before the law. What is abolition without equality? It remains to you to decide that the rebel States, before reentering Congress, should abolish all distinctions based on color. Political franchises in all respects should be enjoyed equally by blacks and whites. These guarantees obtained, open to them your arms and hasten toward a general reconciliation. Avoid any unnecessary prolongation of the present interregnum, (régime exceptionnel.) Add to your other glories that of reestablishing the power of your Government at the immediate close of a bitter civil war. Liberty is bold and strong; and of what use are her boldness and strength if she cannot trust and pardon?

It is repugnant to us to conceive your stopping half way, and conferring upon the former slaves Liberty without equality, or, in other words, liberty without the conditions of freedom; liberty without dignity; liberty with an unopened future, without possible progress; liberty without that upon which it becomes great and attains its end; thus you would reconstitute a new slave party in Congress — further oppressions of slaves throughout the South. Seeking for peace you would reorganize war — servile war at first, for you cannot pronounce with impunity the words BE FREE; and when those whom you have declared free feel that they have neither protection nor rights, nor means of regular action, they are almost infallibly driven to employ other means. Civil war would follow. Is it possible that the blood of the blacks shed on the other side of the Potomac, that cruel oppressions, would not speed that war, and that the generous instincts of the North would not reawaken? They would complain, they would denounce iniquities, they would intervene morally, and the ancient quarrel would blaze forth again. As faithful friends we have better hopes for you. We have said much, convinced that you will easily perceive that there is a warm sympathy in the depths of our fears, and that our sincerity is strengthened by respect and by attachment.

May He who has guarded you and protected you thus far continue to guard and protect you to the end; that He may empower you to finish what you have begun — to treat as follow-citizens and to love as brothers those who, thanks to you, are no longer in slavery; and that He may accomplish for you now and hereafter all those good wishes with which our hearts are filled.

J. H. SERMENT, and others, for Geneva.

ADOLPH CHRIST, and others, for Bâle.

ROBERT LISSOT, and others, for Neufchatel.

F. BIANCHETTI, and others, for Tessin.

BERNARD, and others, for Berne.

M. BECHET, for the Canton De Vaud.

GENEVA, April 10, 1860.

Mr. STEWART. How truthful the remark that "unfinished questions have no pity for the repose of mankind." While four million blacks are struggling for the ballot as the only protection known in republican Governments for life, liberty, and property; while the military arm of this Government is outstretched to enforce disfranchisement of rebels and restrain them from warring upon the life of the nation and the rights of the disfranchised blacks, gentlemen may cry, "Peace! peace!" but there is no peace.

"For freedom's battle, once begun,
Bequeathed by bleeding sire to son,
Though baffled oft, is ever won."

The contest may be lost for years if left unsettled now, but there can be no repose for this country until the principles of the Declaration of Independence are fully acknowledged and practically enforced from ocean to ocean, from the Gulf to the Lakes.

I have often heard the appeal of earnest men in this great contest, and have too often hesitated at what seemed impractical or impossible, but before I could realize the grandeur of the design the work was accomplished. I hear the same warning voice of zealous reformers and earnest republicans proclaiming the simple truths of equal rights and generous amnesty; and as in the past the dark night of slavery and human bondage disappeared before the sunlight of humanity and justice, so in the future the clouds of prejudice and passion which envelope the rights of millions of American citizens will dissipate before the reason and patriotism of the loyal masses of the people.

What guarantees shall be demanded on the restoration of the South, and by what right do we demand guarantees? In proceeding to this branch of my subject I find my own views so well expressed in an able paper from the pen of Robert Dale Owen that I avail myself of his forcible language:

"To the Editor of the Chronicle:

"I take exception, in these days, to no contrarieties of opinion touching the proper mode of restoring harmony between the late belligerent sections of our country. That is a problem which may tax the best energies of the wisest among us, and in regard to the solution of which the ablest may differ. But if the task before us is difficult, it is not hopeless; not, I firmly believe, doubtful even. I have faith in the people. I have faith, stronger still, that God, who forsook us not in the gloom of the rebellion, will guide us now; when the scene of combat is changed from the field of battle to the election precinct and the legislative hall.

"The essential is, that we approach this great subject in a fitting spirit. It avails nothing to talk about the enormity of secession and the condign punishment it merits. The punishment of nations is in other hands than ours. If the judgments of God have not already stamped slavery as a sin and treason against a beneficent Government as a crime, in vain are the efforts of man in that direction.

Nor let us, in our indignation, forget how that sin of slavery, the cause of the rebellion, originally came upon the South; against her own will; against her solemn protest. In December, 1770, the King of Great Britain commanded the Governor of Virginia, 'under pain of the highest displeasure, to assent to no law prohibiting the importation of slaves.' Virginia, in April, 1772, addressed the King in remonstrance, saying to him these remarkable words: 'The importation of slaves, a trade of great inhumanity, will endanger the very existence of your Majesty's American dominions.' Maryland and Carolina followed that lead.

"But aside from this, what so unphilosophical and unjust as the spirit of the Pharisee? It is due to a geographical accident that we were not born slave-holders in the city of Charleston. Dare we assert that if we had been we should have been justter men than they, more scrupulous about living by the labor of others? Shall we stand up, in the temple of our own self-righteousness, and say, 'God, we thank thee that we are not as other men, or even as these South Carolinians?'

"We can never, indeed, forget — God forbid that we should — the terrible consequences of treason; the hardships, the sufferings, the lost lives, the parents and widows bereaved, the countless thousands of homes made desolate among us. But to avert evils in the future better befits a Christian people than to avenge injuries of the past. Let us learn of the despised and the lowly. Is it we only who have injuries to requite? What were our sufferings during the war compared to the thousand wrongs perpetrated, throughout generations, against the millions of southern slaves? But though the iron entered into their souls, did they return evil for evil? Did they forget when the day of liberation dawned, the words of the text, 'Vengeance is mine, I will repay, saith the Lord?'

"If there be among our people a revengeful element, let us not pander to it. If we impose conditions before we restore political rights to those who, defying law and Constitution by force of arms, became public enemies, it ought to be in defense, not in requital we impose conditions.' To a dispassionate looker-on it must seem strange that, here in the North, that should be a question at all. At the close of a four years' embittered war — producing a radical change in the legal and social condition of four million people, creating two vast antagonistic public debts, and entailing a thousand diversities of interest between millions on one side and millions on the other — it would be a thing incredible that government could be properly or safely resumed, without stipulation or precaution, as if nothing had happened. At such a juncture in our national affairs wise precautionary measures are as strictly a dictate of duty as they are clearly a matter of right."

* * * * *

"To us, and not to the 'unjust aggressor' who appealed to the wager of battle and lost, belongs, at this

time, the right to decide what guarantees are needed for the public safety, and how that 'unjust aggressor' shall be rendered 'incapable of doing mischief with the same ease in future.' Dearly we paid for that right! We shall commit a folly unparalleled in the annals of nations if we neglect to use it.

"But if all things are lawful for us, all things are not expedient. Thus, though due time must be taken for the maturing and consummation of precautionary measures, yet, on the other hand, one section of a Republic containing a fourth of its inhabitants cannot, except for a season, safely be shut out from Federal representation. Therefore the political rights of the States lately in insurrection should be restored to them at the earliest day consistently with the peace and safety of the country.

"The dangers attendant on unconditional restoration, which threaten that peace and safety, seem to me three in number; two of a political, the other of a financial character."

I concur with Mr. Owen that the dangers to be apprehended are three in number: two political and one financial. But I classify them thus: the political dangers are, first, immediate and absolute control of the several southern State governments by persons still hostile to the Union; and second, the increased representation in Congress of the disloyal elements of the South. The first is by far the greater evil, but for it the report of the committee furnishes no remedy whatever. The second and the lesser evil is but partially provided for. It is not proposed to eradicate the evil, but if possible to diminish its extent by a small reduction of representation in the other House. I very much fear that this will rather intensify the rebel elements than induce an extension of suffrage. While the franchise is restricted to the whites the rebels will be sure of a full voice in the Senate and a united (though a reduced) vote in the House and complete control of their several State governments. The danger of a division of this immense power by the extension of suffrage would more than counterbalance the loss in the other House. They would submit to this small loss of power and attempt to obtain satisfaction therefor in a more unlimited control over the destinies of the race we have attempted to liberate. I doubt very much whether this change will benefit the black man. It relieves him from misrepresentation in Congress by denying him any representation whatever.

The financial danger, so far as it depends upon an assumption or payment of the rebel debt or compensation for emancipated slaves, is properly guarded against in the fourth section of the report. But the further and greater

financial danger which threatens our national credit grows out of the political dangers which I have mentioned. The commotions and agitations, and perchance civil wars, growing out of the unsettled political questions will disturb our financial system more than the rebels could possibly do by any efforts they might make to saddle upon a loyal people a debt incurred in the interest of slavery and secession. There are but two possible modes of escape from the political dangers which menace the peace and prosperity of our country. The first is disfranchisement of rebels by military power, for it can be done in no other way. To this I am opposed, because it violates the democratic principle and is utterly repugnant to free institutions; because it is against Christianity and humanity; because it is the usual and direct road to despotism; because it has been often tried, and its fruits have been in all ages, in all times, and in all countries, the bitter dregs of slavery, tyranny, human misery, and wretchedness; and because it must inevitably result in the destruction of the Union and the liberty of the people. The second is enfranchisement of the blacks. The trying times which Mr. Lincoln thought might come when the colored man could help "to keep the jewel of liberty in the family of freedom" are upon us. Two fifths of the people of the eleven States are colored, and are instinctively loyal and real friends of the Government. This two fifths was a great drawback upon secession, and after the emancipation proclamation, in spite of all efforts to deceive the blacks, they felt that the Government was their friend, and although they may have done very little effective fighting, still they aided us and injured the enemy in a thousand ways: by giving information, by kindness to prisoners, by the moral effect of enemies at home upon the cause of secession, and by the subtraction of their labor from the rebels and adding it to the resources of the Government.

After this proclamation the South became a house divided against itself, and the work of tearing down was half accomplished. Suppose today the South were united against the Government, and we became involved in a war with Great Britain or France, would we not expect a fearful struggle? But suppose we had two fifths of the people in the South as our friends, would we not regard that fact as a great acquisition of strength? Who can say that an emergency of this kind may never happen when we will need friends in the South as we did during the late war? And remember that the blacks are now free and capable of being more useful friends than they were as slaves. Suppose in settling with our enemies we should make no effectual provisions for the safety of our friends, but turn these State governments over to the late rebels, our friends would be at the mercy of our enemies and

compelled to make terms. Would it be impossible, in that event, for our late enemies to convince our late friends that our friendship after all was of little value? And might not the act of emancipation be regarded by the blacks as a snare and a delusion rather than a blessing? Deserted by all the world, surrounded by their enemies, without means of self-protection, might they not under such circumstances sink in despair and relapse into a hopeless state of wretchedness and misery, awaiting in silence their fate of extermination, prepared for them according to the predictions of the late slave-holders? After all this might not the Union soldier in another war for liberty look in vain for the trusted black friend whom he found ministering to his wants in the darkest hours of the late rebellion?

But aside from their usefulness to us in aiding to sustain the Government, dare we offend a just God by failing to redeem the solemn pledge of liberty which this nation made to the slave? Has not the late war proved a sufficient warning that nations are punished for wrong and oppression and for disregarding human rights? But you still insist the negro is ignorant and ought not to vote. Are not many of the whites also ignorant? This argument proves too much, and if practically put in force so as to exclude all ignorant men, both North and South, the reduction would be too great. But if you allow, as you must, ignorant men who are disloyal to vote, why not let ignorant loyal men vote? All that the friends of suffrage ask is, that the black should vote upon a like educational, property, and moral qualification with the white. Let the States place the standard where they will, provided a majority are not disfranchised and a government not republican set up in violation of the Constitution; but let it be impartial. We go even further, and, not wishing to disfranchise any who now vote, we propose to relieve them from restrictive qualifications which may hereafter be imposed on voters, but we insist that the ballot shall be placed within the reach of every American citizen of whatever race or color. Place any safeguards you please on the ballot, but make them impartial, and we will take the chances for the negro.

Does any one suppose that the Senators and Representatives from South Carolina would not soon have a loyal constituency if the ballot were within reach of the black man? In that State over one half of the people would be a solid column (a black column, if you please,) of loyalty. Does any one doubt that there would be whites enough to join them to obtain control of the State? Suppose those who join them are mere politicians, and they go with the negroes for office and spoils, would it be the first political combination formed for that purpose, and would not those who should obtain office and power by such means be compelled to respect the loyal sentiments of their constituents in order to retain power; and would not the ordinary desire of the politician to serve his friends prompt him to make equal laws and sustain the Union? The more this question is considered the plainer it becomes. I like a platform of principles which will bear examination and investigation. The simple fact is, give the people the ballot and the rulers are their servants, withhold it and the people exist at the will and sufferance of their rulers, and this rule applies South as well as North. Suppose you should withhold the ballot from the laboring classes of the North and allow capital to legislate for labor, aristocracy to make laws for democracy, how many civil rights bills and Freedmen's Bureaus would it require to secure freedom to the masses of the people and make them contented and happy?

But let Senators be warned by the grand demonstrations of the people in favor of these measures of protection for the blacks. Let this voice be understood. What does it mean? Is it difficult of interpretation? Not at all. It means that the blacks shall be free and that Congress shall demand full and complete securities for their freedom. In less than six months every Union man will see that there is no protection, no freedom, for the blacks without the ballot, and the universal sentiment of the loyal masses will demand the enfranchisement of the oppressed race. This is security for the future, self-supporting and self-sustaining security. It permits every man to protect himself, and his own self-interest will prompt him to do it well. It will not impoverish your Treasury and burden you with taxation. It will not consolidate your Government and destroy the legitimate functions of the States; but it will strengthen the foundations of the Republic and enlarge the base and prepare it for the grand superstructure which the builders of our institutions designed when they proclaimed in the Declaration of Independence the equality of every man in the right to life, liberty, and the pursuit of happiness, and the perfect equality of every man to strive to equal and to strive to excel his neighbor in everything great, good, and useful.

But I am asked, would you allow the leaders of the rebellion to return to Congress to insult the loyal North with their odious presence in the councils of the nation, there to plot treason and revile loyalty? I answer, no. I would take the proper measures to prevent it. I would chain them to the ballot of the loyal blacks, and hold them in the strong grasp of a loyal people. They will not send them here. You may frame all the exclusion bills you please, but if you exclude loyalty from the ballot-box, and allow none but rebels with a small portion of loyal whites to vote, disloyalty will find expression in your national Legislature in the persons of lower and meaner men than the intellectual chieftains of the rebellion. The desire to exclude a few from office as an exception or an expression of a sentiment can accomplish no great good. It is not worth serious consideration. It is like disputing

about an old whip in a negotiation for a first-class six-horse team. Exclusion from the franchise and office is idle. It is too difficult to accomplish, and no good results can possibly follow. We do not wish to punish the South. It has already been sufficiently scourged and humiliated by the inevitable results of a bloody war. The avenging hand of Providence has desolated and devastated their land and smitten down the first-born in every household, and if they will now let the bondmen depart from oppression in peace, with the ballot as their shield and buckler, why should we demand further vengeance? "Vengeance is mine, saith the Lord."

I will not attempt a description of the horrors of the civil war brought upon the South by the crime of slavery and the conspiracy for its perpetuation. In the language of Burke, "A storm of universal fire blasted every field, consumed every house, destroyed every temple." The furnaces of retribution for the sins of the people were heated seven times hotter than they were wont to be heated, and the vials of wrath were poured out in torrents on the heads of the conspirators, consuming slavery and destroying treason. Are we not satisfied? Cruel slavery and foul treason shall be no more in America unless we revive and resuscitate the former by disfranchisement and oppressions until it breed new treason to be expiated upon our children with more terrible vengeance than the sins of the fathers have brought upon us. It is no time for crimination and recrimination. This war was not the work of man but of God. Let the North mourn her dead heroes sacrificed in the cause of liberty and humanity, the noblest cause in which man can die. Let the South mourn her dead sacrificed for the crime of slavery, and let her respect the sacrifice and go and sin no more. Let the vengeance of man be stayed. The visitations of destruction and punishment are beyond our comprehension or control. Let not our small individual wrongs and personal prejudices, too insignificant for consideration when we contemplate the grand dispensations of Providence, delay us, or stand as barriers to the consummation of the great work of enfranchisement and liberty. I proclaim as the true platform of principles, which shall survive this Congress and the present age and serve as a landmark for the future, "Peace and goodwill toward all men;" liberty and union; impartial suffrage and universal amnesty.

I appeal to every Union man to declare his faith and stand by his principles; deal honestly with himself and frankly with the South. It is time they understood the full extent of our demands. The opponents of equal rights never argue the right or wrong of impartial suffrage. They assume that it is a great political crime and then argue that the Union party is committed to it. If we join issue with them on this point we must fail, for we are committed to it, and they can prove it. Upon that issue we must lose before the people. But suppose we admit what is true and cannot be denied, and justify our conduct by declaring that we are in favor of impartial suffrage because it is right, and ask our opponents, do you object? If so, why? Dare you deny protection to the friends of the Union while you demand political rights for its enemies? Dare you say that a Union soldier shall not vote, but a rebel soldier shall? Dare you say that he who fed our starving

prisoners shall not vote, but that he who starved them shall? Dare you say that this Government shall punish its friends and reward its enemies? Dare you contend that four million loyal citizens shall be outlawed and trampled under foot and allowed to perish because our enemies are exasperated against them on account of their friendship for us, and at the same time ask enfranchisement for our enemies so that they may destroy our friends, menace our liberty, and embarrass our finances? Dare you deny liberty to the loyal and claim power and freedom for the disloyal? In politics as in law, if you join issue on a false plea you will lose your cause. It is false to say we are not in favor of impartial suffrage; and if we make that issue we shall be defeated. But it is true that all men are equally entitled to life, liberty, and the pursuit of happiness, and if our enemies dare join issue with us on these great principles we are sure of an overwhelming verdict from a loyal and liberty-loving people. Suppose we declare that when the rights of man are freely acknowledged and made secure, that we are in favor of amnesty and mercy for our enemies; dare our opponents say they are for vengeance and blood? Suppose we say that we are contending for justice, and when that is secure our enemies shall enjoy all the civil and political rights of American citizens; dare our opponents say that they shall not enjoy those rights? Suppose we rise to the true grandeur of this great contest and declare that we mean justice, humanity, liberty, and Union; dare our opponents say they mean wrong, oppression, secession, and slavery?

Let me appeal to the people of the South to cease contending for wrong and injustice, and learn to do right and love mercy. "Blessed are the merciful for they shall obtain mercy." Men of the South, put not your trust in modern Democracy. "Beware of false prophets which come to you in sheep's clothing but inwardly are ravening wolves." Have you not heard enough of their vain-glorious boasts of power to aid you? Did they not encourage you to rebel and promise you aid and comfort in your struggle to overthrow the Government, and did they not desert you in the hour of your greatest trial? Were they not invisible in war as they had been invincible in peace?

Do you desire to be betrayed into another conflict with the overwhelming forces of liberty and union? Have not your efforts to destroy the Union and trample upon equal rights been sufficiently disastrous? Do you desire your homes to be again visited by war, pestilence, and famine? Has not the work of destruction satisfied you that there is a just God who takes vengeance on the oppressor and him who denies mercy to the poor and friendless? Think not that modern Democracy can shield you from the terrible retribution that awaits you if you longer deny the inalienable rights of man. A just God has declared oppression and wrong shall depart from the land, and the loyal millions who stand by the Union will execute His commands. For a time the arts of demagogues and the cohesive power of public plunder may seem triumphant, yet they do but seem. The same grand sentiment that rallied the loyal North to strike for liberty and union will still inspire the heart and nerve the arm to finish the work so gloriously begun. The little spring from which first gushed the waters of liberty has become a mighty torrent, sweeping slavery and oppression to destruction. Modern Democracy is but the flood-wood that maddens the rushing waters but cannot stay the flood. Regard not this floating trash but heed the loyal fountains from whence the torrent flows. Attempt no further obstruction of its course, but let it do its work and wash the crime of slavery from a land sacred to freedom. Attempt not impossibilities.

The chains of bondage are broken, the shackles have fallen from the limbs of the slave, and no earthly power can rob him of enfranchisement and liberty, the birthright of an American citizen. Engage not in this wicked work, for the avenging hand cannot be stayed from those who still oppress. In such a conflict your own liberty is in jeopardy, and destruction and devastation threaten your country. Men of the South, let by-gones be by-gones and join in the glorious work of enfranchisement. Let your afflicted country have repose from this fearful strife. Give the ballot to the black man and retain it for yourselves and your posterity. The ballot is a gracious boon and none the less precious because enjoyed by the poor as well as the rich, the black as well as the white. It is the only guarantee of liberty. Is liberty less sweet when secured by all mankind? I appeal to the South in the name of the Father of the Revolution, in the name of justice and humanity, in the name of peace and union, and in the sacred name of Christianity itself to grant the ballot and receive the cordial friendship and fellowship of the brave and generous people of the loyal States. Let it be distinctly understood that if the evils of confiscation, disfranchisement, and military despotism come upon the South it will be because she refused to hear the truth from her friends, and refused to aid them to give her peace, but trusted to her enemies and those who would barter away her liberties in the vain hope of obtaining power for themselves.

Sir, my mountain home and the bold pioneers with whom I have passed all the days of my manhood, and whom I know well, call for no more blood, no more desolation, no more widows and orphans, no more accumulation of debt, but they hope for peace, union, and liberty for all. My constituents love the country and the whole country. There is no State in the Union that is not the native land of many citizens of Nevada. Their home is in the far-off mountains, but their affections cling to every village and hamlet in America. We have lived together upon the shores of the Pacific for near twenty years. The good and bad fortunes of a miner's life have been common to us all. We have learned to appreciate and respect men from all sections, and our destinies are so interwoven in our common pursuits and common interests that the continuance of this unnatural conflict disturbs and mars the happiness of all our people. Nevada advocates everything for security, nothing for revenge; everything for political safety, nothing for partisan power. Her prosperity depends to a great extent upon friendly and cordial relations among her citizens. The restoration of the South will bring peace and happiness to Nevada, and I should not represent her if I were not zealous in that work. I deny that blood, confiscations, disfranchisement, and military despotism is any part of the platform of the Union party to which I belong. If to be a radical means to thirst for human blood, love human misery, and hate mercy, then I am no radical. If to be a radical means to love the Union, the Constitution, and the free Government of the fathers, to do justice to all men and respect the rights of all, then I am a radical. I know not what others may do, but as for me I shall labor honestly and zealously to secure the adoption of any plan which offers any hope of peace and union on the principles of justice and humanity. I shall not despair until a plan looking to revenge and partisan rule shall have been adopted; a plan based on the worst passions of our nature shall have been sanctioned by this Congress, and then I shall lose all hope of any good results from our deliberations. I appeal to Senators to consider this momentous issue in the light of reason and Christianity, to be charitable for the sins of our common humanity, to deal justly, and love mercy.

I shall first offer my resolutions for amnesty and suffrage as a substitute. If I fail in that, I shall ask that they may be submitted as an alternative proposition, and if I am still unsuccessful, I will vote for the plan of the majority so long as it is a better plan than that of the President. But when Congress shall have committed itself to a platform which means either disunion or despotism, I shall await in despair the evils that threaten our country,

hoping that an all-wise Providence may avert the pending storm.

I have no disposition to find fault with the committee on reconstruction. I realize the difficulties which they have been called upon to encounter. That they have acted a noble part in their efforts to harmonize conflicting opinions no one has any just reason to doubt. I rejoice in the manner in which the report is presented and the liberal spirit manifested by the committee toward those who are anxious to aid in the perfection of their plan. I hope for good results when debate shall have terminated and final conclusions shall be presented to a generous public. I cannot believe that if Congress should finally reach the conclusion that the late rebels must be supreme in their local State governments, that they will then adopt measures to exasperate those whom they trust with the life, liberty, and happiness of the black man. If the generosity of the South is to be the only guarantee of a precarious existence that is to be secured for the negro, it is cruelty to him to enrage his master — for master he will be — with aggravating legislation. If you leave him in the lion's mouth do not exasperate the lion, but appease him if possible. If you have no means of security admit the South at once and extinguish the hope of liberty in the breast of the negro, and let him make the best terms he can for his hopeless life.

The President's plan is by far the best, if Congress only aggravates and enrages the South but fails to eradicate the acknowledged evils. The President, according to Mr. Seward, is willing to take votes as a basis of representation, which differs but little from, and I think is an improvement upon, the report of the committee in that regard. He also wishes the confederate debt and claims for emancipated slaves repudiated. If nothing better can be done, let Congress take any plan that will end the conflict; but if we have principles, as we profess to have, it is our duty to affirm and vindicate them. It will be time enough to say the States will not adopt a just plan when that experiment has been tried and failed. If we are to be defeated, let us fall with our face to the foe. I have no ambition to die in an irregular or guerrilla war. My motto is civilized warfare or a square surrender. The country will not justify a distinction without a difference. If there is no difference on questions of principle there ought to be no further cross-purposes between Congress and the President. The world will brand us as factionists and our efforts as a struggle for partisan power, if we rely too much on expediency.

I hope the Senate will pardon the frankness with which I have attempted to express my views. Let amnesty and suffrage be submitted, and allow each State to act separately, and if the South adopt it, the North must; and if the North does, how can the South refuse? It is safe to say she will not jeopardize her peace and security in any such way. Let the plan embody civil rights, impartial suffrage, and repudiation of both rebel debt and claims for emancipated slaves on the one hand, and universal amnesty and restoration of rebels to civil and political rights on the other hand. and the country will finish the work. And when it is done it will be well done.

The PRESIDING OFFICER, (Mr. Williams in the chair.) The question is on the amendment to the joint resolution proposed by the Senator from Ohio, [Mr. Wade] Is the Senate ready for the question?

Mr. HOWARD. I suggest that the discussion be postponed until tomorrow, and I make that motion, that the further consideration of this subject be postponed until tomorrow at one o'clock.

Mr. JOHNSON. Is it in order to move to strike out the third section as it stands now without offering a substitute for it?

The PRESIDING OFFICER. Such a motion would be in order.

Mr. JOHNSON. I make that motion.

Mr. GRIMES. The question will stand, then, on that motion?

Mr. JOHNSON. Yes, sir.

Mr. HOWARD. I hope the vote will be taken on the motion to postpone the further consideration of the joint resolution until tomorrow at one o'clock.

The motion was agreed to.

Mr. SHERMAN. I have prepared a constitutional amendment, or rather an amendment to the proposition of the committee of fifteen, which more nearly meets my own idea than any proposition that has been made, and at the suggestion of others I submit it and ask that it be printed. I do not say that I shall offer it, because I desire to vote for that proposition which will combine the greatest strength, but as this expresses more nearly my own individual idea than any other, I will ask that it be printed.

Mr. GRIMES. Let it be read.

The Secretary read the proposed amendment, as follows:

Strike out sections two and three, and insert as follows:

Representation shall be apportioned among the several States which may be included within this

Union according to the number in each State of male citizens of the United States over twenty-one years of age qualified by the laws of such State to choose members of the most numerous branch of its Legislature, and including such citizens as are disqualified for participating in rebellion.

Direct taxes shall be apportioned among the several States according to the value of the real and personal taxable property situated in each State not belonging to the State or to the United States.

The proposed amendment was ordered to be printed.

RECONSTRUCTION.

The Senate, as in Committee of the Whole, resumed the consideration of the joint resolution (H. R. No. 127) proposing an amendment to the Constitution of the United States, the pending question being on the amendment offered by Mr. JOHNSON to strike out the third section, in the following words:

Sec. 3. Until the 4th day of July, in the year 1870, all persons who voluntarily adhered to the late insurrection, giving it aid and comfort, shall be excluded from the right to vote for Representatives in Congress and for electors for President and Vice President of the United States.

Mr. HOWARD. I hope the vote will be taken on that motion.

Mr. JOHNSON. Is there anything proposed as a substitute for that section?

Mr. CLARK. Your motion precludes that now. You move to strike out, simply.

Mr. JOHNSON. I ask for the yeas and nays upon the amendment.

The yeas and nays were ordered; and being taken, resulted — yeas 43, nays 0; as follows: YEAS — Messrs. Anthony, Buckalew, Chandler, Clark, Conness, Cowan, Cragin, Creswell, Davis, Doolittle, Edmunds, Fessenden, Foster, Grimes, Guthrie, Harris, Henderson, Hendricks, Howard, Howe, Johnson, Kirkwood, Lane of Indiana, Lane of Kansas, Morgan, Morrill, Nesmith, Norton, Nye, Poland, Pomeroy, Ramsey, Riddle, Saulsbury, Sherman, Stewart, Sumner, Trumbull, Van Winkle, Wade, Willey, Williams, and Wilson — 43.

NAYS — 0.

ABSENT — Messrs. Brown, Dixon, McDougall, Sprague, Wright, and Yates — 6.

So the amendment was agreed to.

Mr. HOWARD. I now offer a series of amendments to the joint resolution under consideration, which I will send to the Chair.

Mr. FESSENDEN. Take them one section at a time.

Mr. HOWARD. I will state very briefly what they are. I propose to amend section one of the article by adding after the words "section one" the following words, which will of course constitute a part of section one:

All persons born in the United States and subject to the jurisdiction thereof are citizens of the United States and of the States wherein they reside.

The second amendment—

Mr. FESSENDEN. Let us take a vote on the first one.

Mr. TRUMBULL. The Senator had better state all the amendments.

Mr. JOHNSON. I hope we shall hear them all.

Mr. HOWARD. The second amendment is to amend the second section by striking out the word "citizens," in the twentieth line, where it occurs, and inserting after the word "male" the words "inhabitants, being citizens of the United States;" and by inserting at the end of that section the words "any such State."

The third section has already been stricken out. Instead of that section, or rather in its place, I offer the following:

Sec. 3. No person shall be a Senator or Representative in Congress, or an elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof: but Congress may, by vote of two thirds of each House, remove such disability.

The following is to come in as section four:

The obligations of the United States incurred in suppressing insurrection, or in defense of the Union, or for payment of bounties or pensions incident thereto, shall remain inviolate.

Section four, as it now stands, will be changed to section five, and I propose to amend that section as follows: strike out the word "already," in line thirty-four, and also the words "or which may hereafter be incurred," in line thirty-five, and also the words "or of war" in lines thirty-five and thirty-six, and insert the word "rebellion" in lieu thereof; and also strike out the words "loss of involuntary service or labor" in line thirty-seven, and insert "the loss or emancipation of any slave; but all such debts, obligations, and claims shall be forever held illegal and void."

After consultation with some of the friends of this measure it has been thought that these amendments will be acceptable to both Houses of Congress and to the country, and I now submit them to the consideration of the Senate.

The PRESIDENT *pro tempore*. The first question in order is the amendment proposed to the joint resolution by the Senator from Ohio, [Mr. WADE.]

Mr. WADE. I ask leave to withdraw that amendment.

The PRESIDENT *pro tempore*. It is still in the power of the mover, and he can withdraw it if he pleases. The amendment is withdrawn. The question now is on the amendments proposed by the Senator from Michigan.

Mr. SAULSBURY. It is very well known that the majority of the members of this body who favor a proposition of this character have been in very serious deliberation for several days in reference to these amendments, and have held some four or five caucuses on the subject. Perhaps they have come to the conclusion among themselves that the amendments offered are proper to be made, but this is the first intimation that the minority of the body has had of the character of the proposed change in the constitutional amendment. Now, sir, it is nothing but fair, just, and proper that the minority of the Senate should have an opportunity to consider these amendments; and I rise for the purpose of moving that these amendments, together with the original proposition, be printed, so that we may see them before we are called upon to vote on them. Certainly there can be no graver question, no more serious business that can engage the attention of this Senate than a proposed change in the fundamental law.

Mr. FESSENDEN. I will say to the Senator that if any gentleman on that side of the Chamber desires that these amendments be laid upon the table and printed, there is no objection to that.

Mr. SAULSBURY. Then I will defer any further remarks, and make that motion.

The PRESIDENT *pro tempore*. It is moved that the amendments be printed and that the further consideration of the joint resolution be postponed until tomorrow.

The motion was agreed to.

Mr. SUMNER. I wish to give notice of an amendment which at the proper time I intend to offer to Senate bill No. 292, entitled "A bill to provide for restoring to the States lately in insurrection their full political rights." It is to strike out all after the enacting clause of the first section and to insert a section as a substitute which I ask to have printed.

Mr. JOHNSON and Mr. STEWART. Let it be read.

The PRESIDENT *pro tempore*. The proposed amendment will be read, if there be no objection.

The Secretary read it, as follows:

Strike out all after the enacting clause of the first section of the bill and insert in lieu thereof the following:

That when any State lately in rebellion shall have ratified the foregoing, amendment and shall have modified its constitution and laws in conformity therewith, and shall have further provided that there shall be no denial of the elective franchise to citizens of the United States because of race or color, and that all persons shall be equal before the law, the Senators and Representatives from such State, if found duly elected and qualified, may, after having taken the required oaths of office, be admitted into Congress as such: Provided that nothing in this section shall be so construed as to require the disfranchisement of any loyal person who is now allowed to vote.

Mr. SUMNER. I simply wish to have that amendment printed.

The PRESIDENT *pro tempore*. The order to print will be entered.

Mr. SUMNER. I also ask the unanimous consent of the Senate to introduce a bill of which no notice has been given, which I desire to have considered in connection with the other measure, as it belongs to this group of reconstruction measures.

There being no objection, leave was granted to introduce a bill (S. No. 345) to enforce the amendment to the Constitution abolishing slavery by securing the elective franchise to colored citizens; which was read twice by its title.

Mr. SUMNER. I move that the bill be printed and laid upon the table.

The motion was agreed to.

RECONSTRUCTION.

Mr. HOWARD. I now move to take up House joint resolution No. 127.

The motion was agreed to; and the Senate, as in Committee of the Whole, resumed the reconsideration of the joint resolution (H. R. No. 127) proposing an amendment to the Constitution of the United States.

The PRESIDENT *pro tempore*. The question is on the amendments proposed by the Senator from Michigan, [Mr. HOWARD.]

Mr. HOWARD. The first amendment is to section one, declaring that "all persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside." I do not propose to say anything on that subject except that the question of citizenship has been so fully discussed in this body as not to need any further elucidation, in my opinion. This amendment which I have offered is simply declaratory of what I regard as the law of the land already, that every person born within the limits of the United States, and subject to their jurisdiction, is by virtue of natural law and national law a citizen of the United States. This will not, of course, include persons born in the United States who are foreigners, aliens, who belong to the families of ambassadors or foreign ministers accredited to the Government of the United States, but will include every other class of persons. It settles the great question of citizenship and removes all doubt as to what persons are or are not citizens of the United States. This has long been a great desideratum in the jurisprudence and legislation of this country.

The PRESIDENT *pro tempore*. The first amendment proposed by the Senator from Michigan will be read.

The Secretary read the amendment, which was in line nine, after the words "section one," to insert:

All persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside.

So that the section will read :

Sec. 1. All persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside.

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Mr. DOOLITTLE. I presume the honorable Senator from Michigan does not intend by this amendment to include the Indians. I move, therefore, to amend the amendment — I presume he will have no objection to it — by inserting after the word "thereof" the words "excluding Indians not taxed." The amendment would then read:

All persons born in the United States, and subject to the jurisdiction thereof, excluding Indians not taxed, are citizens of the United States and of the States wherein they reside.

Mr. HOWARD. I hope that amendment to the amendment will not be adopted. Indians born within the limits of the United States, and who maintain their tribal relations, are not, in the sense of this amendment, born subject to the jurisdiction of the United States. They are regarded, and always have been in our legislation and jurisprudence, as being quasi foreign nations.

Mr. COWAN. The honorable Senator from Michigan has given this subject, I have no doubt, a good deal of his attention, and I am really desirous to have a legal definition of "citizenship of the United States." What does it mean? What is its length and breadth? I would be glad if the honorable Senator, in good earnest would favor us with some such definition. Is the child of the Chinese immigrant in California a citizen? Is the child of a Gypsy born in Pennsylvania a citizen? If so, what rights have they? Have they any more rights than a sojourner in the United States? If a traveler comes here from Ethiopia, from Australia, or from Great Britain, he is entitled, to a certain extent, to the protection of the laws. You cannot murder him with impunity. It is murder to kill him, the same as it is to kill another man. You cannot commit an assault and battery on him, I apprehend. He has a right to the protection of the laws; but he is not a citizen in the ordinary acceptation of the word.

It is perfectly clear that the mere fact that a man is born in the country has not heretofore entitled him to the right to exercise political power. He is not entitled, by virtue of that, to be an elector. An elector is one who is chosen by the people to perform that function, just the same as an officer is one chosen by the people to exercise the franchises of an office. Now, I should like to know, because really I have been puzzled for a long while and have been unable to determine exactly, either from conversation with those who ought to know, who have given this subject their attention, or from the decisions of the Supreme Court, the lines and boundaries which circumscribe that phrase, "citizen of the United States." What is it?

So far as the courts and the administration of the laws are concerned, I have supposed that every human being within their jurisdiction was in one sense of the word a citizen, that is, a person entitled to protection; but in so far as the right to hold property, particularly the right to acquire title to real estate, was concerned, that was a subject entirely within the control of the States. It has been so considered in the State of Pennsylvania; and aliens and others who acknowledge no allegiance, either to the State or to the General Government, may be limited and circumscribed in that particular. I have supposed, further, that it was essential to the existence of society itself and particularly essential to the existence of a free State, that it should have the power, not only of declaring who should exercise political power within its boundaries, but that if it were overrun by another and a different race, it would have the right to absolutely expel them. I do not know that there is any danger to many of the States in this Union; but is it proposed that the people of Cal-

ifornia are to remain quiescent while they are overrun by a flood of immigration of the Mongol race? Are they to be immigrated out of house and home by Chinese? I should think not. It is not supposed that the people of California, in a broad and general sense, have any higher rights than the people of China; but they are in possession of the country of California, and if another people of a different race, of different religion, of different manners, of different traditions, different tastes and sympathies are to come there and have the free right to locate there and settle among them, and if they have an opportunity of pouring in such an immigration as in a short time will double or treble the population of California, I ask, are the people of California powerless to protect themselves? I do not know that the contingency will ever happen, but it may be well to consider it while we are on this point

As I understand the rights of the States under the Constitution at present, California has the right, if she deems it proper, to forbid the entrance into her territory of any person she chooses who is not a citizen of some one of the United States. She cannot forbid his entrance; but unquestionably, if she was likely to be invaded by a flood of Australians or people from Borneo, man-eaters or cannibals if you please, she would have the right to say that those people should not come there. It depends upon the inherent character of the men. Why, sir, there are nations of people with whom theft is a virtue and falsehood a merit. There are people to whom polygamy is as natural as monogamy is with us. It is utterly impossible that these people can meet together and enjoy their several rights and privileges which they suppose to be natural in the same society; and it is necessary, a part of the nature of things, that society shall be more or less exclusive. It is utterly and totally impossible to mingle all the various families of men, from the lowest form of the Hottentot up to the highest Caucasian, in the same society.

It must be evident to every man intrusted with the power and duty of legislation, and qualified to exercise it in a wise and temperate manner, that these things cannot be; and in my judgment there should be some limitation, some definition to this term "citizen of the United States." What is it? Is it simply to put a man in a condition that he may be an elector in one of the States? Is it to put him in a condition to have the right to enter the United States courts and sue? Or is it only that he is entitled as a sojourner to the protection of the laws while he is within and under the jurisdiction of the courts? Or is it to set him upon some pedestal, some position, to put him out of the reach of State legislation and State power?

Sir, I trust I am as liberal as anybody to-ward the rights of all people, but I am unwilling, on the part of my State, to give up the right that she claims, and that she may exercise, and exercise before very long, of expelling a certain number of people who invade her borders; who owe to her no allegiance; who pretend to owe none; who recognize no authority in her government; who have a distinct, independent government of their own — an *imperium in imperio*; who pay no taxes; who never perform military service; who do nothing, in fact, which becomes the citizen, and perform none of the duties which devolve upon him, but, on the other hand, have no homes, pretend to own no land, live nowhere, settle as trespassers where ever they go, and whose sole merit is a universal swindle; who delight in it, who boast of it, and whose adroitness and cunning is of such a transcendent character that no skill can serve to correct it or punish it; I mean the Gypsies. They wander in gangs in my State. They follow no ostensible pursuit for a livelihood. They trade horses, tell fortunes, and things disappear mysteriously. Where they came from nobody knows. Their very origin is lost in mystery. No man today can tell from whence the Zingara come or whither they go, but it is understood that they are a distinct people. They never intermingle with any other. They never intermarry with any other. I believe there is no instance on record where a Zingara woman has mated with a man of any other race, although it is true that sometimes the males of that race may mate with the females of others; but I think there is no case in history where it can be found that a woman of that race, so exclusive are they, and so strong are their sectional antipathies, has been known to mate with a man

of another race. These people live in the country and are born in the country. They infest society. They impose upon the simple and the weak everywhere. Are those people, by a constitutional amendment, to be put out of the reach of the State in which they live? I mean as a class. If the mere fact of being born in the country confers that right, then they will have it; and I think it will be mischievous.

I think the honorable Senator from Michigan would not admit the right that the Indians of his neighborhood would have to come in upon Michigan and settle in the midst of that society and obtain the political power of the State, and wield it, perhaps, to his exclusion. I do not know that anybody would agree to that. It is true that our race are not subjected to dangers from that quarter, because we are the strongest, perhaps; but there is a race in contact with this country which, in all characteristics except that of simply making fierce war, is not only our equal, but perhaps our superior. I mean the yellow race; the Mongol race. They outnumber us largely. Of their industry, their skill, and their pertinacity in all worldly affairs, nobody can doubt. They are our neighbors. Recent improvement, the age of fire, has brought their coasts almost in immediate contact with our own. Distance is almost annihilated. They may pour in their millions upon our Pacific coast in a very short time. Are the States to lose control over this immigration? Is the United States to determine that they are to be citizens? I wish to be understood that I consider those people to have rights just the same as we have, but not rights in connection with our Government. If I desire the exercise of my rights I ought to go to my own people, the people of my own blood and lineage, people of the same religion, people of the same beliefs and traditions, and not thrust myself in upon a society of other men entirely different in all those respects from myself. I would not claim that right. Therefore I think, before we assert broadly that everybody who shall be born in the United States shall be taken to be a citizen of the United States, we ought to exclude others besides Indians not taxed, because I look upon Indians not taxed as being much less dangerous and much less pestiferous to society than I look upon Gypsies. I do not know how my honorable friend from California looks upon Chinese, but I do know how some of his fellow-citizens regard them. I have no doubt that now they are useful, and I have no doubt that within proper restraints, allowing that State and the other Pacific States to manage them as they may see fit, they may be useful; but I would not tie their hands by the Constitution of the United States so as to prevent them hereafter from dealing with them as in their wisdom they see fit.

Mr. CONNESS. Mr. President, I have failed to learn, from what the Senator has said, what relation what he has said has to the first section of the constitutional amendment before us; but that part of the question I propose leaving to the honorable gentleman who has charge of this resolution. As, however, the State of California has been so carefully guarded from time to time by the Senator from Pennsylvania and others, and the passage, not only of this amendment but of the so-called civil rights bill, has been deprecated because of its pernicious influence upon society in California, owing to the contiguity of the Chinese and Mongolians to that favored land, I may be excused for saying a few words on the subject.

If my friend from Pennsylvania, who professes to know all about Gypsies and little about Chinese, knew as much of the Chinese and their habits as he professes to do of the Gypsies, (and which I concede to him, for I know nothing to the contrary,) he would not be alarmed in our behalf because of the operation of the proposition before the Senate, or even the proposition contained in the civil rights bill, so far as it involves the Chinese and us.

The proposition before us, I will say, Mr. President, relates simply in that respect to the children begotten of Chinese parents in California, and it is proposed to declare that they shall be citizens. We have declared that by law; now it is proposed to incorporate the same provision in the fundamental instrument of the nation. I am in favor of doing so. I voted for the proposition to declare that the children of all parentage whatever, born in California, should be regarded and treated as citizens of the United States, entitled to equal civil rights with other citizens of the United States.

Now, I will say, for the benefit of my friend, that he may know something about the Chinese in future, that this portion of our population, namely, the children of Mongolian parentage, born in California, is very small indeed, and never promises to be large, notwithstanding our near neighborhood to the Celestial land. The habits of those people, and their religion, appear to demand that they all return to their own country at some time or other, either alive or dead. There are, perhaps, in California today about forty thousand Chinese — from forty to forty-five thousand. Those persons return invariably, while others take their places, and, as I before observed, if they do not return alive their bones are carefully gathered up and sent back to the Flowery Land. It is not an unusual circumstance that the clipper ships trading between San Francisco and China carry at a time three or four hundred human remains of these Chinese. When interred in our State they are not interred deep in the earth, but laid very near the surface, and then mounds of earth are laid over them, so that the process of disinterment is very easy. That is their habit and custom; and as soon as they are fit for transmission to their own country they are taken up

with great regularity and sent there. None of their bones are allowed to remain. They will return, then, either living or dead.

Another feature connected with them is, that they do not bring their females to our country but in very limited numbers, and rarely ever in connection with families; so that their progeny in California is very small indeed. From the description we have had from the honorable Senator from Pennsylvania of the Gypsies, the progeny of all Mongolians in California is not so formidable in numbers as that of the Gypsies in Pennsylvania. We are not troubled with them at all. Indeed, it is only in exceptional cases that they have children in our State; and therefore the alarming aspect of the application of this provision to California, or any other land to which the Chinese may come as immigrants, is simply a fiction in the brain of persons who deprecate it, and that alone.

I wish now to address a few words to what the Senator from Pennsylvania has said as to the rights that California may claim as against the incursion of objectionable population from other States and countries. The State of California at various times has passed laws restrictive of Chinese immigration. It will be remembered that the Chinese came to our State, as others did from all parts of the world, to gather gold in large quantities, it being found there. The interference with our own people in the mines by them was deprecated by and generally objectionable to the miners in California. The Chinese are re-

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garded, also, not with favor as an addition to the population in a social point of view; not that there is any intercourse between the two classes of persons there, but they are not regarded as pleasant neighbors; their habits are not of a character that make them at all an inviting class to have near you, and the people so generally regard them. But in their habits otherwise, they are a docile, industrious people, and they are now passing from mining into other branches of industry and labor. They are found employed as servants in a great many families and in the kitchens of hotels; they are found as farm hands in the fields; and latterly they are employed by thousands — indeed, I suppose there are from six to seven thousand of them now employed in building the Pacific railroad. They are there found to be very valuable laborers, patient and effective; and, I suppose, before the present year closes, ten or fifteen thousand of them, at least, will be employed on that great work.

The State of California has undertaken, at different times, to pass restrictive statutes as to the Chinese. The State has imposed a tax on their right to work the mines, and collected it ever since the State has been organized — a tax of four dollars a month on each China-man; but the Chinese could afford to pay that and still work in the mines, and they have done so. Various acts have been passed imposing a poll tax or head tax, a capitation tax, upon their arrival at the port of San Francisco; but all such laws, when tested before the supreme court of the State of California, the supreme tribunal of that people, have been decided to be unconstitutional and void.

Mr. HOWARD. A very just and constitutional decision, undoubtedly.

Mr. CONNESS. Those laws have been tested in our own courts and when passed under the influence of public feeling there they have been declared again and again by the supreme court of the State of California to be void, violative of our treaty obligations, an interference with the commerce of the nation. Now, then, I beg the honorable Senator from Pennsylvania, though it may be very good capital in an electioneering campaign to declaim against the Chinese, not to give himself any trouble about the Chinese, but to confine himself entirely to the injurious effects of this provision upon the encouragement of a Gypsy invasion of Pennsylvania. I had never heard myself of the invasion of Pennsylvania by Gypsies. I do not know, and I do not know that the honorable Senator can tell us, how many Gypsies the census shows to be within the State of Pennsylvania. The only invasion of Pennsylvania within my recollection was an invasion very much worse and more disastrous to the State, and more to be feared and more feared, than that of Gypsies. It was an invasion of rebels, which this amendment, if I understand it aright, is intended to guard against and to prevent the recurrence of. On that occasion I am not aware, I do not remember that the State of Pennsylvania claimed the exclusive right of expelling the invaders, but on the contrary my recollection is that Pennsylvania called loudly for the assistance of her sister States to aid in the expulsion of those invaders — did not claim it as a State right to exclude them, did not think it was a violation of the sovereign rights of the State when the citizens of New York and New Jersey went to the field in Pennsylvania and expelled those invaders.

But why all this talk about Gypsies and Chinese? I have lived in the United States for now many a year, and really I have heard more about Gypsies within the last two or three months than I have heard before in my life. It cannot be because they have increased so much of late. It cannot be because they have been felt to be particularly oppressive in this or that locality. It must be that the Gypsy element is to be added to our political agitation, so that hereafter the Negro alone shall not claim our entire attention. Here is a simple declaration that a score or a

few score of human beings born in the United States shall be regarded as citizens of the United States, entitled to civil rights, to the right of equal defense, to the right of equal punishment for crime with other citizens; and that such a provision should be deprecated by any person having or claiming to have a high humanity passes all my understanding and comprehension.

Mr. President, let me give an instance here, in this connection to illustrate the necessity of the civil rights bill in the State of California; and I am quite aware that what I shall say will go to California and I wish it to do so. By the influence of our "southern brethren," who I will not say invaded California, but who went there in large numbers some years since, and who seized political power in that State and used it, who made our statutes and who expounded our statutes from the bench, negroes were forbidden to testify in the courts of law of that State, and Mongolians were forbidden to testify in the courts; and therefore for many years, indeed, until 1862, the State of California held officially that a man with a black skin could not tell the truth, could not be trusted to give a relation in a court of law of what he saw and what he knew. In 1862 the State Legislature repealed the law as to Negroes, but not as to Chinese. Where white men were parties the statute yet remained, depriving the Mongolian of the right to testify in a court of law. What was the consequence of preserving that statute? I will tell you. During the four years of rebellion a good many of our "southern brethren" in California took upon themselves the occupation of what is there technically called "road agents." It is a term well known and well understood there. They turned out upon the public highways, and became robbers, highway robbers; they seized the treasure transmitted and conveyed by the express companies, by our stage lines, and in one instance made a very heavy seizure, and claimed that it was done in accordance with the authority of the so-called confederacy. But the authorities of California hunted them down, caught a few of them, and caused them to be hanged, not recognizing the commission of Jeff Davis for those kinds of transactions within our bounds. The spirit of insubordination and violation of law, promoted and encouraged by rebellion here, affected us so largely that large numbers of — I will not say respectable southern people, and I will not say that it was confined to them alone — but large numbers of persons turned out upon the public highways, so that robbery was so common upon the highways, particularly in the interior and in the mountains of that State, that it was not wondered at, but the wonder was for anybody that traveled on the highways to escape robbery. The Chinese were robbed with impunity, for if a white man was not present no one could testify against the offender. They were robbed and plundered and murdered, and no matter how many of them were present and saw the perpetration of those acts, punishment could not follow, for they were not allowed to testify. Now, sir, I am very glad indeed that we have determined at length that every human being may relate what he heard and saw in a court of law when it is required of him, and that our jurors are regarded as of sufficient intelligence to put the right value and construction upon what is stated.

So much for what has been said in connection with the application of this provision to the State that I in part represent here. I beg my honorable friend from Pennsylvania to give himself no further trouble on account of the Chinese in California or on the Pacific coast. We are fully aware of the nature of that class of people and their influence among us, and feel entirely able to take care of them and to provide against any evils that may flow from their presence among us. We are entirely ready to accept the provision proposed in this constitutional amendment, that the children born here of Mongolian parents shall be declared by the Constitution of the United States to be entitled to civil rights and to equal protection before the law with others.

Mr. HOWARD. There is a typographical error in the amendment now under consideration. The word "State" in the eleventh line is printed "States." It should be in the singular instead of the plural number, so as to read "all persons born in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State"(not States) "wherein they reside." I move that that correction be made.

Mr. JOHNSON. I suggest to the Senator from Michigan that it stands just as well as it is.

Mr. HOWARD. I wish to correct the error of the printer; it is printed "States" instead of "State."

The PRESIDENT pro tempore. The correction will be made.

Mr. JOHNSON. I doubt whether it is an error of the printer.

The PRESIDENT pro tempore. The question is on the amendment proposed by the Senator from Wisconsin to the amendment of the Senator from Michigan to the resolution before the Senate.

Mr. DOOLITTLE. I moved this amendment because it seems to me very clear that there is a large mass of the Indian population who are clearly subject to the jurisdiction of the United States who ought not to be included as citizens of the United States. All the Indians upon reservations within the several States are most clearly subject to our jurisdiction, both civil and military. We appoint civil agents who have a control over them in behalf of the Government. We have our military commanders in the neighborhood of the reservations, who have complete control. For instance, there are seven or eight thousand Navajoes at this moment under the control of General

Carlton, in New Mexico, upon the Indian reservations, managed, controlled, fed at the expense of the United States, and fed by the War Department, managed by the War Department, and at a cost to this Government of almost a million and a half of dollars every year. Because it is managed by the War Department, paid out of the commissary fund and out of the appropriations for quartermasters' stores, the people do not realize the enormous expense which is upon their hands. Are these six or seven thousand Navajoes to be made citizens of the United States? Go into the State of Kansas, and you find there any number of reservations, Indians in all stages, from the wild Indian of the plains, who lives on nothing but the meat of the buffalo, to those Indians who are partially civilized and have partially adopted the habits of civilized life. So it is in other States. In my own State there are the Chippewas, the remnants of the Winnebagoes, and the Pottawatomies. There are tribes in the State of Minnesota and other States of the Union. Are these persons to be regarded as citizens of the United States, and by a constitutional amendment declared to be such, because they are born within the United States and subject to our jurisdiction?

Mr. President, the word "citizen," if applied to them, would bring in all the Digger Indians of California. Perhaps they have mostly disappeared; the people of California, perhaps, have put them out of the way; but, there are the Indians of Oregon and the Indians of the Territories. Take Colorado; there are more Indian citizens of Colorado than there are white citizens this moment if you admit it as a State. And yet by a constitutional amendment you propose to declare the Utes, the Tabahuaches, and all those wild Indians to be citizens of the United States, the great Republic of the world, whose citizenship should be a

title as proud as that of king, and whose danger is that you may degrade that citizenship.

Mr. President, citizenship, if conferred, carries with it, as a matter of course, the rights, the responsibilities, the duties, the immunities, the privileges of citizens, for that is the very object of this constitutional amendment to extend. I do not intend to address the Senate at length on this question now. I have simply raised the question. I think that it would be exceedingly unwise not to adopt this amendment and to put in the Constitution of the United States the broad language proposed. Our fathers certainly did not act in this way, for in the Constitution as they adopted it they excluded the Indians who are not taxed; did not enumerate them, indeed, as apart of the population upon which they based representation and taxation; much less did they make them citizens of the United States.

Mr. President, before the subject of the constitutional amendment passes entirely from the Senate, I may desire to avail myself of the opportunity to address the body more at length; but now I simply direct what I have to say to the precise point contained in the amendment which I have submitted.

Mr. FESSENDEN. I rise not to make any remarks on this question, but to say that if there is any reason to doubt that this provision does not cover all the wild Indians, it is a serious doubt; and I should like to hear the opinion of the chairman of the Committee on the Judiciary, who has investigated the civil rights bill so thoroughly, on the subject, or any other gentleman who has looked at it. I had the impression that it would not cover them.

Mr. TRUMBULL. Of course my opinion is not any better than that of any other member of the Senate; but it is very clear to me that there is nothing whatever in the suggestions of the Senator from Wisconsin. The provision is, that "all persons born in the United States, and subject to the jurisdiction thereof, are citizens." That means "subject to the complete jurisdiction thereof." Now, does the Senator from Wisconsin pretend to say that the Navajoe Indians are subject to the complete jurisdiction of the United States? What do we mean by "subject to the jurisdiction of the United States?" Not owing allegiance to anybody else. That is what it means. Can you sue a Navajoe Indian in court? Are they in any sense subject to the complete jurisdiction of the United States? By no means. We make treaties with them, and therefore they are not subject to our jurisdiction. If they were, we would not make treaties with them. If we want to control the Navajoes, or any other Indians of which the Senator from Wisconsin has spoken, how do we do it? Do we pass a law to control them? Are they subject to our jurisdiction in that sense? Is it not understood that if we want to make arrangements with the Indians to whom he refers we do it by means of a treaty? The Senator himself has brought before us a great many treaties this session in order to get control of those people.

If you introduce the words "not taxed," that is a very indefinite expression. What does "excluding Indians not taxed" mean? You will have just as much difficulty in regard to those Indians that you say are in Colorado, where there are more Indians than there are whites. Suppose they have property there, and it is taxed; then they are citizens.

Mr. WADE. And ought to be.

Mr. TRUMBULL. The Senator from Ohio says they ought to be. If they are there and within the jurisdiction of Colorado, and subject to the laws of Colorado, they ought to be citizens; and that is all that is proposed. It cannot be said of any Indian who owes allegiance, partial allegiance if you please, to some other Government that he is "subject to the jurisdiction of the United States." Would the Senator from Wisconsin think for a moment of bringing a bill into Congress to subject these wild Indians with whom we have no treaty to the laws and regulations of civilized life? Would he think of punishing them for instituting among themselves their own tribal regulations? Does the Government of the United States pretend to take jurisdiction of murders and robberies and other crimes committed by one Indian upon another? Are they subject to our jurisdiction in any just sense? They are not subject to our jurisdiction. We do not exercise jurisdiction over them. It is only those persons who come completely within our jurisdiction, who are subject to our laws, that we think of making citizens; and there can be no objection to the proposition that such persons should be citizens.

It seems to me, sir, that to introduce the words suggested by the Senator from Wisconsin would not make the proposition any clearer than it is, and that it by no means embraces, or by any fair construction — by any construction, I may say — could embrace the wild Indians of the plains or any with whom we have treaty relations, for the very fact that we have treaty relations with them shows that they are not subject to our jurisdiction. We cannot make a treaty with ourselves; it would be absurd. I think that the proposition is clear and safe as it is.

Mr. JOHNSON. Mr. President, the particular question before the Senate is whether the amendment proposed by the Senator from Wisconsin shall be adopted. But while I am up, and before I proceed to consider the necessity for that amendment, I will say a word or two upon the proposition itself; I mean that part of section one which is recommended as an amendment to the old proposition as it originally stood.

The Senate are not to be informed that very serious questions have arisen, and some of them have given rise to embarrassments, as to who are citizens of the United States, and what are the rights which belong to them as such; and the object of this amendment is to settle that question. I think, therefore, with the committee to whom the matter was referred, and by whom the report has been made, that it is very advisable in some form or other to define what citizenship is; and I know no better way of accomplishing that than the way adopted by the committee. The Constitution as it now stands recognizes a citizenship of the United States. It provides that no person shall be eligible to the Presidency of the United States except a natural-born citizen of the United States or one who was in the United States at the time of the adoption of the Constitution; it provides that no person shall be eligible to the office of Senator who has not been a citizen of the United States for nine years; but there is no definition in the Constitution as it now stands as to citizenship. Who is a citizen of the United States is an open question. The decision of the courts and the doctrine of the commentators is, that every man who is a citizen of a State becomes ipso facto a citizen of the United States; but there is no definition as to how citizenship can exist in the United States except through the medium of a citizenship in a State.

Now, all that this amendment provides is, that all persons born in the United States and not subject to some foreign Power— for that, no doubt, is the meaning of the committee who have brought the matter before us — shall be considered as citizens of the United States. That would seem to be not only a wise but a necessary provision. If there are to be citizens of the United States entitled everywhere to the character of citizens of the United States there should be some certain definition of what citizenship is, what has created the character of citizen as between himself and the United States, and the amendment says that citizenship may depend upon birth, and I know of no better way to give rise to citizenship than the fact of birth within the territory of the United States, born of parents who at the time were subject to the authority of the United States. I am, however, by no means prepared to say, as I think I have intimated before, that being born within the United States, independent of any new constitutional provision on the subject, creates the relation of citizen to the United States.

The amendment proposed by my friend from Wisconsin I think, and I submit it to the Senate, should be adopted. The honorable member from Illinois seems to think it unnecessary, because, according to his interpretation of the amendment as it stands, it excludes those who are proposed to be excluded by the amendment of the Senator from Wisconsin, and he thinks that that is done by saying that those only who are born in the United States are to become citizens thereof, who at the time of birth are "subject to the jurisdiction thereof" and he supposes and states very positively that the Indians are not subject to the jurisdiction of the United States. With due deference to my friend from Illinois, I think he is in error. They are within the territorial limits of the United States. If they were not, the provision would be altogether inapplicable to them. In one sense, therefore, they are a part of the people of the United States, and independent of the manner in which we have been dealing with them it

would seem to follow necessarily that they are subject to the jurisdiction of the United States, as is anybody else who may be born within the limits of the United States. But when the United States took possession — England for us in the beginning, and our limits have been extended since — of the territory which was originally peopled exclusively by the Indians, we found it necessary to recognize some kind of a national existence on the part of the aboriginal settlers of the United States; but we were under no obligation to do so, and we are under no constitutional obligation to do so now, for although we have been in the habit of making treaties with these several tribes, we have also, from time to time, legislated in relation to the Indian tribes. We punish murder committed within the territorial limits in which the tribes are to be found. I think we punish the crime of murder committed by one Indian upon another Indian. I think my friend from Illinois is wrong in supposing that that is not done.

Mr. TRUMBULL. Not except where it is done under special provision — not with the wild Indians of the plains.

Mr. JOHNSON. By special provision of legislation. That I understand. I am referring to that.

Mr. TRUMBULL. We propose to make citizens of those brought under our jurisdiction in that way. Nobody objects to that, I reckon.

Mr. JOHNSON. Yes, I do. I am not objecting at all to their being citizens now; what I mean to say, is that overall the Indian tribes within the limits of the United States, the United States may — that is the test — exercise jurisdiction. Whether they exercise it in point of fact is another question; whether they propose to govern them under the treaty-making power is quite another question; but the question as to the authority to legislate is one, I think, about which, if we were to exercise it, the courts would have no doubt; and when, therefore, the courts come to consider the meaning of this provision, that all persons born within the limits of the United States and subject to the jurisdiction thereof are citizens, and are called upon to decide whether Indians born within the United States, with whom we are now making treaties are citizens, I think they will decide that they have become citizens by virtue of this amendment. But at any rate, without expressing any decided opinion to that effect, as I would not do when the honorable member from Illinois is so decided in the opposite opinion, when the honorable member from Wisconsin, to say nothing of myself, entertains a reasonable doubt that Indians would be embraced within the provision, what possible harm can there be in guarding against it? It does not affect the constitutional amendment in any way. That is not my purpose, and I presume is not the purpose of my friend from Wisconsin.

The honorable member from Illinois says that the terms which the member from Wis-

consin proposes to insert would leave it very uncertain. I suppose that my friend from Illinois agreed to the second section of this constitutional amendment, and these terms are used in that section. In apportioning the representation, as you propose to do by virtue of the second section, you exclude from the basis "Indians not taxed." What does that mean? The honorable member from Illinois says that that is very uncertain. What does it mean? It means, or would mean if inserted in the first section, nothing, according to the honorable member from Illinois. Well, if it means nothing inserted in the first section it means nothing where it is proposed to insert it in the second section. But I think my friend from Illinois will find that these words are clearly understood and have always been understood; they are now almost technical terms. They are found, I think, in nearly all the statutes upon the subject; and if I am not mistaken, the particular statute upon which my friend from Illinois so much relied as one necessary to the peace of the country, the civil rights bill, has the same provision in it, and that bill I believe was prepared altogether, or certainly principally, by my friend from Illinois. I read now from the civil rights bill as it passed:

"That all persons born in the United States and not subject to any foreign Power, excluding Indians not taxed, are hereby declared to be citizens."

What did these words mean? They meant something; and their meaning as they are inserted in that act is the same meaning which will be given to them if they are inserted in the first section of this constitutional amendment. But I conclude by saying that when we are trying to settle this, among other questions, for all time, it is advisable—and if my friend will permit me to say so, our clear duty—to put every provision which we adopt in such plain language as not to be capable of two interpretations, if we can. When Senators upon the floor maintain the opinion that as it now stands it is capable of an interpretation different from that which the committee mean, and the amendment proposed gets clear of that interpretation which the committee do not mean, why should we not adopt it?

I hope, therefore, that the friends—and I am the friend of this provision as far as we have gone in it—that the

friends of this constitutional amendment will accept the suggestion of the honorable member from Wisconsin.

Mr. TRUMBULL. The Senator from Maryland certainly perceives a distinction between the use of the words "excluding Indians not taxed" in the second section and in the first. The second section is confined to the States; it does not embrace the Indians of the plains at all. That is a provision in regard to the apportionment of representation among the several States.

Mr. JOHNSON. The honorable member did not understand me. I did not say it meant the same thing.

Mr. TRUMBULL. I understood the Senator, I think. I know he did not say that the clause in the second section was extended all over the country, but he did say that the words "excluding Indians not taxed" were in the second section, and inasmuch as I had said that those words were of uncertain meaning, therefore, having gone for the words in the second section I was guilty of a great inconsistency. Now, I merely wish to show the Senator from Maryland that the words in the second section may have a very clear and definite meaning, when in the first section they would have a very uncertain meaning, because they are applied under very different circumstances. The second section refers to no persons except those in the States of the Union; but the first section refers to persons everywhere, whether in the States or in the Territories or in the District of Columbia. Therefore the criticism upon the language that I had used, it seems to me, is not a just one.

But the Senator wants to insert the words, "excluding Indians not taxed." I am not willing to make citizenship in this country depend on taxation. I am not willing, if the Senator from Wisconsin is, that the rich Indian residing in the State of New York shall be a citizen and the poor Indian residing in the State of New York shall not be a citizen. If you put in those words in regard to citizenship, what do you do? You make a distinction in that respect, if you put it on the ground of taxation. We had a discussion on the civil rights bill as to the meaning of these words, "excluding Indians not taxed." The Senator from Maryland, [Mr. Johnson] I think, on that occasion gave this definition to the phrase "excluding Indians not taxed," that it did not allude to the fact of taxation simply but it meant to describe a class of persons; that is, civilized Indians. I was inclined to fall into that view. I was inclined to adopt the suggestion of the Senator from Maryland, that the words "excluding Indians not taxed" did not mean literally excluding those upon whom a tax was not assessed and collected, but rather meant to define a class of persons, meaning civilized Indians; and I think I gave that answer to the Senator from Indiana, [Mr. Hendricks] who was disposed to give it the technical meaning that "Indians not taxed" meant simply those upon whom no tax was laid. If it does mean that, then it would be very objectionable to insert those words here, because it would make of a wealthy Indian a citizen and would not make a citizen of one not possessed of wealth under the same circumstances. This is the uncertainty in regard to the meaning of those words. The Senator from Maryland and myself, perhaps, would understand them alike as embracing all Indians who were not civilized; and yet, if you insert that language, "Indians not taxed," other persons may not understand them that way; and I remember that the Senator from Indiana was disposed to understand them differently when we had the discussion upon the civil rights bill. Therefore I think it better to avoid these words and that the language proposed in this constitutional amendment is better than the language in the civil rights bill. The object to be arrived at is the same.

I have already replied to the suggestion as to the Indians being subject to our jurisdiction. They are not subject to our jurisdiction in the sense of owing allegiance solely to the United States; and the Senator from Maryland, if he will look into our statutes, will search in vain for any means of trying these wild Indians. A person can only be tried for a criminal offense in pursuance of laws, and he must be tried in a district which must have been fixed by law before the crime was committed. We have had in this country, and have today, a large region of country within the territorial limits of the United States, unorganized, over which we do not pretend to exercise any civil or criminal jurisdiction, where wild tribes of Indians roam at pleasure, subject to their own laws and regulations, and we do not pretend to interfere with them. They would not be embraced by this provision.

For these reasons I think this language is better than the language employed by the civil rights bill.

Mr. HENDRICKS. Will the Senator from Illinois allow me to ask him a question before he sits down?

Mr. TRUMBULL. Certainly.

Mr. HENDRICKS. I wish to know if, in his opinion, it is not a matter of pleasure on the part of the Government of the United States, and especially of Congress, whether the laws of the United States be extended over the Indians or not; if it is not a matter to be decided by Congress alone whether we treat with the Indians by treaty or govern them by direct law; in other words, whether Congress has not the power at its pleasure to extend the laws of the United States over the Indians and to govern them.

Mr. TRUMBULL. I suppose it would have the same power that it has to extend the laws of the United States over Mexico and govern her if in our discretion we thought proper to extend the laws of the United States over the republic of Mexico, or the empire of Mexico, if you please so to call it, and had sufficient physical power to

enforce it. I suppose you may say in this case we have the power to do it, but it would be a violation of our treaty obligations, a violation of the faith of this nation, to extend our laws over these Indian tribes with whom we have made treaties saying we would not do it.

Mr. FESSENDEN. We could extend it over Mexico in the same way.

Mr. TRUMBULL. I say we could extend it over Mexico just as well; that is, if we have the power to do it. Congress might declare war, or, without declaring war, might extend its laws, or profess to extend them, over Mexico, and if we had the power we could enforce that declaration; but I think it would be a breach of good faith on our part to extend the laws of the United States over the Indian tribes with whom we have these treaty stipulations, and in which treaties we have agreed that we would not make them subject to the laws of the United States. There are numerous treaties of that kind.

Mr. VAN WINKLE. If the Senator will permit me, I wish to remind him of a citation from a decision of the Supreme Court that he himself made here, I think, when the veto of the civil rights bill was under discussion; and if I correctly understood it, as he read it, the Supreme Court decided that these untaxed Indians were subjects, and distinguished between subjects and citizens.

Mr. TRUMBULL. I think there are decisions that treat them as subjects in some respects. In some sense they are regarded as within the territorial boundaries of the United States, but I do not think they are subject to the jurisdiction of the United States in any legitimate sense; certainly not in the sense that the language is used here. The language seems to me to be better chosen than it was in the other bill. There is a difficulty about the words, "Indians not taxed." Perhaps one of the reasons why I think so is because of the persistency with which the Senator from Indiana himself insisted that the phrase "excluding Indians not taxed," the very words which the Senator from Wisconsin wishes to insert here, would exclude everybody that did not pay a tax; that that was the meaning of it; we must take it literally. The Senator from Maryland did not agree to that, nor did I; but if the Senator from Indiana was right, it would receive a construction which I am sure the Senator from Wisconsin would not be for: for if these Indians come within our limits and within our jurisdiction and are civilized, he would just as soon make a citizen of a poor Indian as of the rich Indian.

Mr. HENDRICKS. I expected the Senator from Illinois, being a very able lawyer, at the head of the Judiciary Committee, to meet the question that I asked him and to answer it as a question of law, and not as a question of military power. I did not ask him the question whether the Government of the United States had the military power to go into the Indian territory and subjugate the Indians to the political power of the country; nor had he a right to understand the question in that sense. I asked him the question whether, under the Constitution, under the powers of this Government, we may extend our laws over the Indians and compel obedience as a matter of legal right, from the Indians. If the Indian is bound to obey the law he is subject to the jurisdiction of the country; and that is the question I desired the Senator to meet as a legal question, whether the Indian would be bound to obey the law which Congress in express terms extended over him in regard to questions within the jurisdiction of Congress.

Now, sir, this question has once or twice been decided by the Attorney General, so far as he could decide it. In 1855 he was inquired of whether the laws of the United States regulating the intercourse with the Indian tribes, by the general legislation in regard to Oregon,

had been extended to Oregon; and he gave it as his opinion that the laws had been extended to Oregon, and regulated the intercourse between the white people and the Indians there. Subsequently, the Attorney General was asked whether Indians were citizens of the United States in such sense as that they could become the owners of the public lands where the right to acquire them was limited to citizens; and in the course of that opinion he says that the Indian is not a citizen of the United States by virtue of his birth, but that he is a subject. He says:

"The simple truth is plain that the Indians are the subjects of the United States, and therefore are not, in mere right of home-birth, citizens of the United States. The two conditions are incompatible. The moment it comes to be seen that the Indians are domestic subjects of this Government, that moment it is clear to the perception that they are not the sovereign constituent ingredients of the Government. This distinction between citizens proper, that is, the constituent members of the political sovereignty, and subjects of that sovereignty, who are not therefore citizens, is recognized in the best authorities of public law."

He then cites some authorities. Again, he says:

"Not being citizens of the United States by mere birth, can they become so by naturalization? Undoubtedly."

"But they cannot become citizens by naturalization under existing general acts of Congress. (2 Kent's Commentaries, page 72.)

"Those acts apply only to foreigners, subjects of another allegiance. The Indians are not foreigners, and they are in our allegiance without being citizens of the United States."

Mr. JOHNSON. Whose opinion is that?

Mr. HENDRICKS. That is the opinion of Mr. Cushing, given on the 5th of July, 1856. I did not intend to discuss this question, but I will make one further reply to the Senator from Illinois. When the civil rights bill was under consideration I was of the opinion that the term "not taxed" meant not taxed; and when words are plain in the law I take them in their natural sense. When there is no ambiguity the law says there shall be no construction; and when you say a man is not taxed I presume it means that he is not taxed. I do not know any words that express the meaning more clearly than the words themselves, and therefore I cannot express the meaning in any more apt words than the words used by the Senator from Wisconsin, "Indians not taxed." When I said that that was making citizenship to rest upon property I recollect, or I think I do, the indignant terms in which the Senator from Illinois then replied, conveying the idea that it was a demagogical argument in this body to speak of a subject like that; and yet today he says to the Senator from Wisconsin that it is not a statesmanlike proposition. He makes the same point upon the Senator from Wisconsin which he undertook to make upon me on the civil rights bill.

If it is the pleasure of Congress to make the wild Indians of the desert citizens, and then if three fourths of the States agree to it. I presume we will get along the best way we can; and what shall then be the relations between these people and the United States will be for us and for our descendants to work out. They are not now citizens; they are subjects. For safety, as a matter of policy we regulate our intercourse with them to a large extent by treaties, so as that they shall assent to the regulations that govern them. That is a matter of policy, but we need not treat with an Indian. We can make him obey our laws, and being liable to such obedience he is subject to the jurisdiction of the United States. I did not intend to discuss this question, but I got into it by the inquiry I made of the Senator from Illinois.

Mr. HOWARD. I hope, sir, that this amendment will not be adopted. I regard the language of the section as sufficiently certain and definite. If amended according to the suggestion of the honorable Senator from Wisconsin it will read as follows:

All persons born in the United States, and subject to the jurisdiction thereof, excluding Indians not taxed, are citizens of the United States, and of the State wherein they reside.

Suppose we adopt the amendment as suggested by the honorable Senator from Wisconsin, in what condition will it leave us as to the Indian tribes wherever they are found? According to the ideas of the honorable Senator, as I understand them, this consequence would follow: all that would remain to be done on the part of any State would be to impose a tax upon the Indians, whether in their tribal condition or otherwise, in order to make them citizens of the United States. Does the honorable Senator from Wisconsin contemplate that? Does he propose to leave this amendment in such a condition that the State of Wisconsin, which he so ably represents here, will have the right to impose taxes upon the Indian tribes within her limits, and thus make of these Indians constituting the tribes, no matter how numerous, citizens of the United States and of the State of Wisconsin? That would be the direct effect of his amendment if it should be adopted. It would, in short, be a naturalization, whenever the States saw fit to impose a tax upon the Indians, of the whole Indian race within the limits of the States.

Mr. CLARK. The Senator will permit me to suggest a case. Suppose the State of Kansas, for instance, should tax her Indians for five years, they would be citizens.

Mr. HOWARD. Undoubtedly.

Mr. CLARK. But if she refuse to tax them for the next ten years how would they be then? Would they be citizens or not?

Mr. HOWARD. I take it for granted that when a man becomes a citizen of the United States under the Constitution they cannot cease to be a citizen, except by expatriation or the commission of some crime by which his citizenship shall be forfeited.

Mr. CLARK. It depends upon taxation.

Mr. HOWARD. The continuance of the quality of citizenship would not. I think, depend upon the continuance of taxation.

Mr. CLARK. But still he would be an "Indian not taxed."

Mr. HOWARD. He has been taxed once.

Mr. CLARK. The point I wish to bring the Senator to is this: would not the admission of a provision of that

kind make a sort of shifting use of the Indians?

Mr. HOWARD. It might, depending upon the construction which would happen to be given by the courts to the language of the Constitution. The great objection, therefore, to the amendment is, that it is an actual naturalization, whenever the State sees fit to enact a naturalization law in reference to the Indians in the shape of the imposition of a tax, of the whole Indian population within their limits. There is no evading this consequence, but still I cannot impute to the honorable Senator from Wisconsin a purpose like that. I think he has misapprehended the effect of the language which he suggests. I think the language as it stands is sufficiently certain and exact. It is that "all persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

I concur entirely with the honorable Senator from Illinois, in holding that the word "jurisdiction" as here employed, ought to be construed so as to imply a full and complete jurisdiction on the part of the United States, coextensive in all respects with the constitutional power of the United States, whether exercised by Congress, by the executive or by the judicial department; that is to say, the same jurisdiction in extent and quality as applies to every citizen of the United States now. Certainly, gentlemen cannot contend that an Indian belonging to a tribe, although born within the limits of a State, is subject to this full and complete jurisdiction. That question has long since been adjudicated, so far as the usage of the Government is concerned. The Government of the United States have always regarded and treated the Indian tribes within our limits as foreign Powers, so far as the treaty-making power is concerned, and so far especially as the commercial power is concerned, for in the very Constitution itself there is a provision that Congress shall have power to regulate commerce, not only with foreign nations and among the States, but also with the Indian tribes. That clause, in my judgment, presents a full and complete recognition of the national character of the Indian tribes, the same character in which they have been recognized ever since the discovery of the continent and its occupation by civilized men; the same light in which the Indians were viewed and treated by Great Britain from the earliest commencement of the settlement of the continent. They have always been regarded, even in our ante-revolutionary history, as being independent nations, with whom the other nations of the earth have held treaties, and in no case, I believe, has either the Government of Great Britain or of the United States recognized the right of an individual Indian to transfer or convey lands. Why? If he was a citizen, in other words, if he was not a subject of a foreign Power, if he did not belong to a tribe whose common law is that land as well as almost every other description of property shall be held in common among the members of the tribe, subject to a chief, why is it that the reservation has been imposed and always observed upon the act of conveyance on the part of the Indian?

A passage has been read from an opinion given by Mr. Attorney General Cashing on this subject, in which, it seems to me, he takes great liberties with the Constitution in speaking of the Indian as being a subject of the United States. Certainly I do not so hold; I cannot so hold, because it has been the habit of the Government from the beginning to treat with the Indian tribes as sovereign Powers. The Indians are our wards. Such is the language of the courts. They have a national independence. They have an absolute right to the occupancy of the soil upon which they reside; and the only ground of claim which the United States has ever put forth to the proprietorship of the soil of an Indian territory is simply the right of preemption; that is, the right of the United States to be the first purchaser from the Indian tribes. We have always recognized in an Indian tribe the same sovereignty over the soil which it occupied as we recognize in a foreign nation of a power in itself over its national domains. They sell the lands to us by treaty, and they sell the lands as the sovereign Power owning, holding, and occupying the lands.

But it is useless, it seems to me, Mr. President, to enlarge further upon the question of the real political power of Indians or of Indian tribes. Our legislation has always recognized them as sovereign Powers. The Indian who is still connected by his tribal relation with the government of his tribe is subject for crimes committed against the laws or usages of the tribe to the tribe itself, and not to any foreign or other tribunal. I believe that has been the uniform course of decision on that subject. The United States courts have no power to punish an Indian who is connected with a tribe for a crime committed by him upon another member of the same tribe.

Mr. FESSENDEN. Within the territory.

Mr. HOWARD. Yes, sir. Why? Because the jurisdiction of the nation intervenes and ousts what would otherwise be perhaps a right of jurisdiction of the United States. But the great objection to the amendment to the amendment is that it is an unconscious attempt on the part of my friend from Wisconsin to naturalize all the Indians within the limits of the United States. I do not agree to that. I am not quite so liberal in my views. I am not yet prepared to pass a sweeping act of naturalization by which all the Indian savages, wild or tame, belonging to a tribal relation, are to become my fellow-citizens and go to the polls and vote with me and hold lands and deal in every other way that a citizen of the United States has a right to do.

not to include these Indians within this constitutional amendment. In purpose I agree with him. I do not intend to include them. My purpose is to exclude them; and the question between us is whether his language includes them and mine excludes them, or whether his language excludes them and mine includes them. The Senator says, in the first place, if the words which are suggested by me, "Indians not taxed," are to govern, any State has it in its power to naturalize the Indian tribes within its limits and bring them in as citizens. Can a State tax them unless they are subject to the State? Certainly not. My friend from Michigan will not contend that an Indian can be taxed if he is not subject to the State or to the United States; and yet, if they are subject to the jurisdiction of the United States they are declared by the very language of his amendment to be citizens.

Now, sir, the words which I have used are borrowed from the Constitution as it stands — the Constitution adopted by our fathers. We have lived under it for seventy years; and these words, "Indians not taxed," are the very words which were used by our fathers in forming the Constitution as descriptive of a certain class of Indians which should not be enumerated as a part of our population, as distinguished from another class which should be enumerated as a part of our population; and these are words of description used by them under which we have acted for seventy years and more. They have come to have a meaning that is understood as descriptive of a certain class of Indians that may be enumerated within our population as a part of the citizens of the United States, to constitute a part of the basis of the political power of the United States, and others not included within it are to be excluded from that basis. The courts of the United States have had occasion to speak on this subject. and from time to time they have declared that the Indians are subjects of the United States, not citizens; and that is the very word in your amendment where they are "subject to the jurisdiction" of the United States. Why, sir, what does it mean when you say that a people are subject to the jurisdiction of the United States? Subject, first, to its military power; second, subject to its political power; third, subject to its legislative power; and who doubts our legislative power over the reservations upon which these Indians are settled? Speaking upon that subject, I have to say that one of the most distinguished men who ever sat in this body, certainly that have sat in this body since I have been a member of it, the late Senator from Vermont, Judge Collatner, time and again urged upon me, as a member of the Committee on Indian Affairs, to bring forward a scheme of legislation by which we should pass laws and subject all the Indians in all the Territories of the United States to the legislation of Congress direct. The Senator from Ohio not now in his seat [Mr. Sherman] has contended for the same thing, and other members of Congress contend that the very best policy of dealing with the Indian tribes is to subject them at once to our legislative power and jurisdiction. "Subjects of the United States!" Why, sir, they are completely our subjects, completely in our power. We hold them as our wards. They are living upon our bounty.

Mr. President, there is one thing that I doubt not Senators must have forgotten. In all those vast territories which we acquired from Mexico, we took the sovereignty and the jurisdiction of the soil and the country from Mexico, just as Mexico herself had held it, just as Spain had held it before the Mexican republic was established; and what was the power that was held by Spain and by Mexico over the Indian tribes? They did not recognize even the possessory title of an Indian in one foot of the jurisdiction of those territories. In reference to the Indians of California, we have never admitted that they had sufficient jurisdiction over any part of its soil to make a treaty with them, The Senate of the United States expressly refused to make treaties with the Indians of California, on the ground that they had no title and no jurisdiction whatever in the soil; they were absolutely subject to the authority of the United States, which we derived from our treaty with Mexico.

The opinion of Attorney General Cushing, one of the ablest men who has ever occupied the position of Attorney General, has been read here, in which he states clearly that the Indians, though born upon our soil, owing us allegiance, are not citizens; they are our subjects; and that is the very word which is used in this amendment proposed to the Constitution of the United States, declaring that if they be "subject" to our jurisdiction, born on our soil, they are, *ipso facto*, citizens of the United States.

Mr. President, the celebrated civil rights bill which has been passed during the present Congress, which was the forerunner of this constitutional amendment, and to give validity to which this constitutional amendment is brought forward, and which without this constitutional amendment to enforce it has no validity so far as this question is concerned, uses the following language:

"That all persons born in the United States, and not subject to any foreign Power, excluding Indians not taxed, are hereby declared to be citizens of the United States."

Why should this language be criticised any more now, when it is brought forward here in this constitutional

amendment, than when it was in the civil rights bill? Why should the language be more criticised here than it is in the second section of this constitutional amendment, where the same words are used? The second section, in apportioning representation, proposes to count the whole number of persons in each State "excluding Indians not taxed." Why not insert those words in the first section as well as in the second? Why not insert them in this constitutional amendment as well as in the civil rights bill? The civil rights bill undertook to do this same thing. It undertook to declare that "all persons born in the United States, and not subject to any foreign Power, excluding Indians not taxed, are hereby declared to be citizens of the United States." But, sir, the committee of fifteen, fearing that this declaration by Congress was without validity unless a constitutional amendment should be brought forward to enforce it, have thought proper to report this amendment.

Mr. FESSENDEN. I want to say to the honorable Senator, who has a great regard for truth, that he is drawing entirely upon his imagination. There is not one word of correctness in all that he is saying, not a particle, not a scintilla, not the beginning of truth.

Mr. DOOLITTLE. I take a little issue with my friend from Maine on that point as a question of fact.

Mr. FESSENDEN. In the first place, this was not brought forward by the committee of fifteen at all.

Mr. DOOLITTLE. This proposition was first introduced into the House by a gentleman from Ohio by the name of Bingham.

Mr. FESSENDEN. I thought the Senator was speaking of this first part of the section, the amendment, not the whole.

Mr. DOOLITTLE. No, sir; that is proposed by the Senator from Michigan. As I understand, a member from Ohio, Mr. Bingham, who in a very able speech in the House maintained that the civil rights bill was without any authority in the Constitution, brought forward a proposition in the House of Representatives to amend the Constitution so as to enable Congress to declare the civil rights of all persons, and that constitutional amendment, Mr. Bingham being himself one of the committee of fifteen, was referred by the House to that committee, and from the committee it has been reported. I say I have a right to infer that it was because Mr. Bingham and others of the House of Representatives and other persons upon the committee had doubts, at least, as to the constitutionality of the civil rights bill that this proposition to amend the Constitution now appears to give it validity and force. It is not an imputation upon any one.

Mr. GRIMES. It is an imputation upon every member who voted for the bill, the inference being legitimate and logical that they violated their oaths and knew they did so when they voted for the civil rights bill.

Mr. DOOLITTLE. The Senator goes too far. What I say is that they had doubts.

Mr. FESSENDEN. I will say to the Senator one thing: whatever may have been Mr. Bingham's motives in bringing it forward, he brought it forward some time before the civil rights bill was considered at all and had it referred to the committee, and it was discussed in the committee long before the civil rights bill was passed. Then I will say to him further, that during all the discussion in the committee that I heard nothing was ever said about the civil rights bill in connection with that. It was placed on entirely different grounds.

Mr. DOOLITTLE. I will ask the Senator from Maine this question: if Congress under the Constitution now has the power to declare that "all persons born in the United States, and not subject to any foreign Power, excluding Indians not taxed, are hereby declared to be citizens of the United States," what is the necessity of amending the Constitution at all on this subject?

Mr. FESSENDEN. I do not choose that the Senator shall get off from the issue he presented. I meet him right there on the first issue. If he wants my opinion upon other questions, he can ask it afterward. I was saying that the committee of fifteen brought this proposition forward for a specific object.

Mr. DOOLITTLE. I said the committee of fifteen brought it forward because they had doubts as to the constitutional power of Congress to pass the civil rights bill.

Mr. FESSENDEN. Exactly; and I say, in reply, that if they had doubts, no such doubts were stated in the committee of fifteen, and the matter was not put on that ground at all. There was no question raised about the civil rights bill.

Mr. DOOLITTLE. Then I put the question to the Senator: if there are no doubts, why amend the Constitution on that subject?

Mr. FESSENDEN. That question the Senator may answer to suit himself. It has no reference to the civil rights bill.

Mr. DOOLITTLE. That does not meet the case at all. If my friend maintains that at this moment the Constitution of the United States, without amendment gives all the power you ask, why do you put this new amendment into it on that subject?

Mr. HOWARD. If the Senator from Wisconsin wishes an answer, I will give him one such as I am able to give.

Mr. DOOLITTLE. I was asking the Senator from Maine.

Mr. HOWARD. I was a member of the same committee, and the Senator's observations apply to me equally with the Senator from Maine. We desired to put this question of citizenship and the rights of citizens and freedmen under the civil rights bill beyond the legislative power of such gentlemen as the Senator from Wisconsin, who would pull the whole system up by the roots and destroy it and expose the freedmen again to the oppressions of their old masters.

Mr. DOOLITTLE. The Senator has made his answer, I suppose.

Mr. HOWARD. Yes, sir.

Mr. DOOLITTLE. Mr. President, when the Senator undertakes to say that I have any disposition to subject the freedmen to the despotism of their old masters, he says that which there is not a particle of foundation or excuse for saying. I say to that Senator

Mr. HOWARD. I beg the Senator to allow me one word. I made no personal imputation against the Senator from Wisconsin.

Mr. DOOLITTLE. I desire to finish my sentence before being interrupted.

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Mr. HOWARD. I will not be forced by the Senator into a false position.

Mr. DOOLITTLE. I do not desire to be interrupted until I finish one sentence. I say to that Senator that so far as the rights of the freedmen are concerned, I am willing to compare my course of action in this body or elsewhere with his. I say to that Senator that I labored as hard as he has labored to secure the rights and liberties of the freedmen, to emancipate the slaves of the South, and to put an end forever not only to slavery, but to the aristocracy that was founded upon it; and I have never, by word or deed, said or done anything, as a member of this body or elsewhere, tending to build up any oppression against the freedmen, tending to destroy any of their rights. I say to that honorable Senator, and I am ready at any time to meet him in argument upon it although it is drawing me now from the question in dispute, that I myself prepared and introduced here and urged a bill whose provisions defended every right of the freedmen just as much as the bill to which we have now made reference, and I am prepared to do so and to defend their rights with the whole power of the Government.

But, sir, the Senator has drawn me off from the immediate question before the Senate. The immediate question is, whether the language which he uses, "all persons subject to the jurisdiction of the United States," includes these Indians. I maintain that it does; and, therefore, for the purpose of relieving it from any doubt, for the purpose of excluding this class of persons, as they are, in my judgment, utterly unfit to be citizens of the United States, I have proposed this amendment, which I borrow from the Constitution as it stands, which our fathers adopted more than seventy years ago, which I find also in the civil rights bill which passed this present Congress, and which I find also in the second section of this constitutional amendment when applied to the enumeration of the inhabitants of the States. I insist that it is just, proper in every way, but reasonable, that we exclude the wild Indians from being regarded or held as citizens of the United States.

Mr. WILLIAMS. I would not agree to this proposed constitutional amendment if I supposed it made Indians not taxed citizens of the United States. But I am satisfied that, giving to the amendment a fair and reasonable construction, it does not include Indians not taxed. The first and second sections of this proposed amendment are to be taken together, are to be construed together, and the meaning of the word "citizens," as employed in both sections, is to be determined from the manner in which that word is used in both of those sections. Section one provides that

All persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

If there be any doubt about the meaning of that paragraph, I think that doubt is entirely removed by the second section, for by the second section of this constitutional amendment Indians not taxed are not counted at all in the basis of representation. The words in the second section are as follows:

Representatives shall be apportioned among the several States which may be included within the Union, according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.

They are not to be regarded as persons to be counted under any circumstances. Indians not taxed are not even entitled to be counted as persons in the basis of representation under any circumstances; and then the section

provides-

But whenever, in any State, the elective franchise shall be denied to any portion of its male inhabitants, being citizens of the United States, &c.

Now, can any reasonable man conclude that the word "citizens" there applies to Indians not taxed, or includes Indians not taxed, when they are expressly excluded from the basis of representation and cannot even be taken into the enumeration of persons upon whom representation is to be based? I think it is perfectly clear, when you put the first and second sections together, that Indians not taxed are excluded from the term "citizens" because it cannot be supposed for one moment that the term "citizens," as employed in these two sections, is intended to apply to Indians who are not even counted under any circumstances as a part of the basis of representation. I therefore think that the amendment of the Senator from Wisconsin is clearly unnecessary. I do not believe that "Indians not taxed" are included, and I understand that to be a description of Indians who maintain their tribal relations and who are not in all respects subject to the jurisdiction of the United States.

In one sense, all persons born within the geographical limits of the United States are subject to the jurisdiction of the United States, but they are not subject to the jurisdiction of the United States in every sense. Take the child of an ambassador. In one sense, that child born in the United States is subject to the jurisdiction of the United States, because if that child commits the crime of murder, or commits any other crime against the laws of the country, to a certain extent he is subject to the jurisdiction of the United States, but not in every respect; and so with these Indians. All persons living within a judicial district may be said, in one sense, to be subject to the jurisdiction of the court in that district, but they are not in every sense subject to the jurisdiction of the court until they are brought, by proper process, within the reach of the power of the court. I understand the words here, "subject to the jurisdiction of the United States," to mean fully and completely subject to the jurisdiction of the United States. If there was any doubt as to the meaning of those words, I think that doubt is entirely removed and explained by the words in the subsequent section; and believing that, in any court or by any intelligent person, these two sections would be construed not to include Indians not taxed, I do not think the amendment is necessary.

Mr. SAULSBURY. I do not presume that any one will pretend to disguise the fact that the object of this first section is simply to declare that negroes shall be citizens of the United States. There can be no other object in it, I presume, than a further extension of the legislative kindness and beneficence of Congress toward that class of people.

"The poor Indian, whose untutored mind, Sees God in clouds, or hears him in the wind,"

was not thought of. I say this not meaning it to be any reflection upon the honorable committee who reported the amendment, because for all the gentlemen composing it I have a high respect personally; but that is evidently the object. I have no doubt myself of the correctness of the position, as a question of law, taken by the honorable Senator from Wisconsin; but, sir, I feel disposed to vote against his amendment, because if these negroes are to be made citizens of the United States, I can see no reason in justice or in right why the Indians should not be made citizens. If our citizens are to be increased in this wholesale manner, I cannot turn my back upon that persecuted race, among whom are many intelligent, educated men, and embrace as fellow-citizens the negro race. I therefore, as at present advised, for the reasons I have given, shall vote against the proposition of my friend from Wisconsin, although I believe, as a matter of law, that his statements are correct.

The PRESIDENT *pro tempore*. The question is on the amendment of the Senator from Wisconsin to the amendment proposed by the Senator from Michigan.

Mr. DOOLITTLE. I ask for the yeas and nays on that question.

The yeas and nays were ordered.

Mr. VAN WINKLE. I desire to have the amendment to the amendment read.

The Secretary read the amendment to the amendment, which was to insert after the word "thereof" in the amendment the words "excluding Indians not taxed" so that the amendment, if amended, would read:

All persons born in the United States, and subject to the jurisdiction thereof, excluding Indians not taxed, are citizens of the United States and of the State wherein they reside.

The question being taken by yeas and nays, resulted — yeas 10, nays 80; as follows:

YEAS—Messrs. Buckalew, Cowan, Davis, Doolittle, Guthrie, Hendricks, Johnson, McDougall, Norton, and Riddle—10.

NAYS—Messrs. Anthony, Clark, Conners, Cragin, Creswell, Edmunds, Fessendon, Poster, Grimes, Harris, Henderson, Howard, Howe, Kirkwood Lane of Kansas, Morgan, Morrill, Nye, Poland, Pomeroy, Ramsey, Sherman, Stewart, Sumner, Trumbull, Van Winkle, Wade, Willey, Williams, and Wilson—30.

ABSENT—Messrs. Brown, Chandler, Dixon. Lane of Indiana, Nesmith, Saulsbury, Sprague, Wright. and Yates).

So the amendment to the amendment was rejected.

The PRESIDENT *pro tempore*. The question now is on the amendment of the Senator from Michigan.

The amendment was agreed to.

The PRESIDENT *pro tempore*. The next amendment proposed by the Senator from Michigan [Mr. Howard] will be read.

The Secretary read the amendment, which was in section two, line twenty-two, after the word "male," to strike out the word "citizens" and insert "inhabitants, being citizens of the United States" so as to make the section read:

Sec. 2. Representatives shall be apportioned among the several States which may be included within the Union, according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But whenever, in any State, the elective franchise shall be denied to any portion of its male inhabitants, being citizens of the United States not less than twenty-one years of age, or in any way abridged, except for participation in rebellion or other crime, the basis of representation in such State shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens not less than twenty-one years of age.

Mr. JOHNSON. Is it supposed that that amendment changes the section as it was before? It appears to me to be the same as it was before, because, although the word "inhabitants" is used, it is in connection with the other words that they are to be citizens of the United States. As it originally stood it read:

But whenever, in any State, the elective franchise shall be denied to any portion of its male citizens.

Mr. FESSENDEN. The object is the same as in the amendment already made, to prevent a State from saying that although a person is a citizen of the United States he is not a citizen of the State.

Mr. HOWARD. The object is to make section two conform to section one, to make them harmonize.

Mr. JOHNSON. I am satisfied.

The amendment was agreed to.

Mr. SAULSBURY. Is it in order now to offer an amendment to the first section?

The PRESIDENT *pro tempore*. There are several more amendments before the Senate, offered by the Senator from Michigan, [Mr. Howard] not yet acted upon. The next amendment offered by him will be read.

The Secretary read the amendment, which was to add at the end of section two the words "in such State."

The amendment was agreed to.

The next amendment was to insert as section three the following:

Sec. 3. That no person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two thirds of each House, remove such disability.

Mr. HENDRICKS. I move to amend the amendment by inserting after the word "shall" in the thirty-seventh line the words "during the term of his office." I presume I understand

the idea upon which this section rests. It is, I suppose, that men who held office, and upon assuming the office took the oath prescribed by the Constitution, became obligated by that oath to stand by the Constitution and the oath, and that going into the rebellion was not only a breach of their allegiance, but a breach of their oath. I presume that is the theory of it; and that persons who have violated the oath to support the Constitution of the United States ought not to be allowed to hold any office. If it does not rest upon that proposition, then I am not able to see why these men should be excluded more than others who have violated their allegiance. Now, sir, what is the obligation prescribed in the sixth article of the Constitution?

"The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution."

I presume that that oath means that in the discharge of the duties of the office the party will support the

Constitution of the United States. I have not examined any authorities upon this subject, and have seen no opinion expressed upon it, but I presume that is the meaning and force of the oath. When a Senator of the United States takes the oath to support the Constitution of the United States, it means that, as a Senator, in the discharge of his official duty, he will obey the Constitution, and in no respect violate its provisions. If a member of a State Legislature takes that oath, I presume it means that as a legislator for the State he will respect and obey the Constitution, and when his term of office has expired I suppose the oath ceases to be obligatory upon him, or, rather, that the oath has done its work. If he has obeyed the oath while he held the office, I presume his obedience to it is no longer required by virtue of the oath itself. Everybody, by virtue of his allegiance, is bound to obey the Constitution of the United States, to stand by the Union. But this oath of itself is an oath of office binding upon him as an officer, else why is it that if a Senator taking this oath, serves six years and is reelected, he is sworn again? For the simple reason that he is entering upon another term of service, and for that term of service he must take this official oath to obey the Constitution of the United States. I presume this oath means as if it read, "Senators and Representatives and all other officers in the United States and in the States shall be bound by an oath or affirmation to support the Constitution of the United States in their offices." I know of no other purpose that there can be to require a special oath from an officer.

If this be the proper construction of the oath — and I do not express an opinion upon the subject with a great deal of confidence — then the amendment which I propose to this section ought to be adopted, because after the term of service has expired in any particular office the official oath is satisfied, and the party becomes one of the mass of the community, and if he went into the rebellion he went into it violating his allegiance, like any and all other citizens who with him went into the rebellion. It is for that reason that I propose the amendment.

Mr. HOWARD. I hope this amendment will not be adopted. I do not regard the constitutional oath referred to by the Senator from Indiana precisely in the same light in which he presents it. If I understand him rightly, he holds that although a person may have taken that constitutional oath, if he has not committed insurrection during the continuance of his term of office, but commits that act after the expiration of that term, the previous taking of the oath by him adds to the act no additional moral guilt. I do not concur with him in that view. It seems to me that where a person has taken a solemn oath to support the Constitution of the United States there is a fair moral implication that he cannot afterward commit an act which in its effect would destroy the Constitution of the United States without incurring the guilt of at least moral perjury. I desire to see such a comment made upon this violation of the oath of office by insurgents as will stigmatize that act for all time to come, and I think the loyal people of the United States are of the same opinion.

Mr. SAULSBURY. I had supposed that the Senate would adopt this amendment without any discussion. The proposition of the Senator from Indiana, in my judgment, is so plain that I did not suppose it could have been questioned, that the oath a person takes when he enters upon the exercise of an office, or as preparatory to the discharge of the duties of an office, relates simply and solely to that office and does not extend beyond it. I never heard the interpretation of the oath of office as given by the Senator from Indiana questioned before. I shall therefore vote for his amendment.

Mr. VAN WINKLE. If I understand the language and effect of this amendment, it is intended to debar those who were under that oath of office at the time they went into rebellion from hereafter holding office either under the State or national Government. I certainly concur with the Senator from Indiana, that the binding force of an official oath only continues as long as the term of the office. If it is the intention to exclude from these privileges any one who has ever held an office under the national Government or the State governments, then the language of the section is correct as it is; but if it is intended to confine it to those who were at the moment of separating themselves from the Government and going over to the rebellion under the obligation of an oath to support the Constitution, then I think the amendment offered by the Senator from Indiana should be adopted. We all admit that the obligation to support the Constitution is as binding on every citizen of the United States as an oath can make it, and that in fact oaths in most cases are of no effect. except to have a most solemn acknowledgment of the duty that the oath seems to many to impose; but it does add something to the guilt of the party that at the time he engaged in rebellion he was actually under the obligation of an oath to support the Constitution. I shall favor the amendment if the object is to exclude those who were in the actual exercise of these offices, and therefore under the binding force of their official oaths, at the moment that they embarked in the rebellion. Whatever view the majority have of it of course should govern the language employed; but understanding that the word "oath" is here introduced to designate that class of persons, I shall vote with the Senator from Indiana for his amendment. It would have been sufficient, if the other view was to prevail, to have said that no one who had ever held office under the General or State government should have these privileges, and then there would be no necessity of

course for introducing this amendment. I hope that it will prevail, because, while it will exclude a very-threat many it will still leave some to hold office in the southern States, especially in those States where they will have very few qualified persons, and where many, we may infer, have a less degree of guilt at least than those whom this amendment will exclude.

Mr. JOHNSON. I am opposed to the amendment as proposed by the committee, and shall vote, therefore, for the amendment suggested by the member from Indiana, because the former excludes too many persons from eligibility to office. All history shows, as I think, that on the conclusion of a civil war, the more mild, consistently with the safety of the country, the measures are which are adopted the better for the restoration of en-tire peace and harmony.

The effect of the amendment of the committee will be to embrace nine tenths, perhaps, of the gentlemen of the South, to disfranchise them until Congress shall think proper by a majority of two thirds of each branch to remove the restriction. I have no idea that with a provision like this, the constitutional amendment will receive the sanction of any southern State, for if the suggestion of the member from Indiana is not adopted then all who have at any time held any office under the United States or who have been in any branch of the Legislature of a State, which they could not be without taking the oath required by the Constitution of the United States, are to be excluded from holding the office of Senator or Representative or that of an elector for President, or any office, civil or military, under the United States; and not satisfied with that, all who have held office under any State, military or civil, legislative or judicial, are to fall within the inhibition.

Mr. FESSENDEN. Those who have been members of a State Legislature.

Mr. JOHNSON. And all that have held judicial office. They are all obliged to take the oath.

Mr. FESSENDEN. The Senator will observe it is following the constitutional provision.

Mr. JOHNSON. I know it is. But all the members of the State Legislature, all the judicial officers of the State, are compelled to take the oath prescribed by the Constitution of the United States; and I suppose it is fair to estimate that persons will be excluded who held office twenty and thirty years ago, as well as those who held office at the time the rebellion broke out. Now, I put it to Senators to say whether they think that these southern States will, with such a restriction as that, accept this constitutional amendment. If the amendment was in separate articles, so that each article might be acted upon separately by the States, the rejection of some of the articles would not be so fatal, perhaps, as will be a rejection of the whole. Suppose the whole is rejected, and it must be if any part is, where are we? Just where we are now. Where are we now? As far as arms are concerned, peace has returned; as far as harmony is concerned, peace is apparently as far off as ever; and what is to be the effect upon the prosperity of the States which are to be kept in this condition of thralldom? Who will go as immigrants into the southern States? Who will invest their capital, who will engage in the cultivation of cotton and of rice and of sugar? And just in proportion as these products are lessened, just so in proportion is the prosperity of the whole country delayed.

I have had occasion to say more than once, and the idea is so fully impressed upon my mind that I hope the Senate will excuse me for reiterating it, that we ought to consider, it is due to justice to consider, it is due to generosity and magnanimity to consider, that many of the men who will be excluded by this constitutional amendment from sharing in the honors of the country believed that the Constitution as it stood gave them the right to secede. Illegal as the notion was in my judgment, yet some of the brightest intellects in the country, North as well as South, maintained the same doctrine; and the war, therefore, in which we have been engaged was not a war like the civil wars which have existed in other countries. It was a war growing out of a difference of constitutional opinion, to say nothing of anything else. The opinion entertained by the South was as honest as was the opinion entertained by the North — wrong, dangerous, unconstitutional, inconsistent as I think it is with the continuance of any Union to be formed out of the States of the United States, but still honestly entertained. Now they have become satisfied by the result of the conflict that their doctrine was one which could not be maintained and never will be suffered to exist as long as the people of the United States are true to the interest and the prosperity and renown of the country.

Why, then, should we exclude the numerous class that will be excluded by this provision? Do you not want to act upon the public opinion of the masses of the South? Do you not want to win them back to loyalty? And if you do,

why strike at the men who, of all others, are most influential and can bring about the end which we all have at heart? That my friend from Indiana properly construes the obligation of that oath I have no doubt. I think every

lawyer in the Senate would say, every statesman within the sound of my voice would say, that for no act done after the termination of the official term of the officer, inconsistent with the Constitution of the United States, by him who had been the incumbent of the office, could he be indicted for perjury; and if he could not be indicted for perjury, it could only be because the legal obligation of the oath — I am not speaking now of the moral obligation — expired at the termination of the term of office to which the party had been elected or appointed.

Then as to the moral obligation, what does it add to the force of that moral obligation which allegiance as between the Government and the party owing the allegiance creates? Treason has been committed against the United States, according to the letter of the law and according to our understanding of the law; but it is neither more nor less treason, it is not a milder or more aggravated type of treason, because the parties who may have committed it may at some time or other have taken an oath to support the Constitution of the United States. If any man was indicted who had not taken that oath, he could not be permitted to urge in his defense or in extenuation of his crime that he had never taken an oath to support the Constitution.

But this amendment does not go far enough. I suppose the framers of the amendment thought it was necessary to provide for such an exigency. I do not see but that any one of these gentlemen may be elected President or Vice President of the United States, and why did you omit to exclude them? I do not understand them to be excluded from the privilege of holding the two highest offices in the gift of the nation. No man is to be a Senator or Representative or an elector for President or Vice President

Mr. MORRILL. Let me call the Senator's attention to the words "or hold any office, civil or military, under the United States."

Mr. JOHNSON. Perhaps I am wrong as to the exclusion from the Presidency; no doubt I am; but I was misled by noticing the specific exclusion in the case of Senators and Representatives. But I submit to the Senate whether it is advisable, whether it is politic, looking to the end which we all seek to accomplish, the true restoration of the Union, a union of hearts as well as a union of hands, that you should exclude the large mass of people from participating in the honors of the Government who will be excluded by this provision.

Mr. GUTHRIE. I am inclined to vote for this amendment without going into a criticism upon the legal effect of the oath. I am against the section altogether on account of its proscriptive nature. I will vote for the amendment, because if it be adopted it will reduce the number to whom the section will apply. I should be glad if now, after having been so many months in session, we had agreed among ourselves as to the conciliation of the South, because conciliation at last is our only true policy; for unless we come to agree with each other; unless we are able again to meet and unite in these Halls as citizens and representatives of a common country, to shape the destinies of that country in Congress, to direct it against embattled nations, if it shall become necessary, we are not a united people.

This third section is not an act of conciliation, it is an act of proscription. It is true it is not as extensive as the third section sent to us from the other House was. I think we have gained an advantage in that respect. That measure was intended to proscribe all the active population of the rebel States, because they all stood by the southern movement. This section as it now stands certainly proscribes the representative men of the South, the men who had influence, and who still have influence in their localities, and who can do more in the

work of conciliation here and elsewhere than all the men that you leave out of it. They are the representative men of the South, they have the confidence of the people of that section of the country. I think they have given abundant evidence that they are satisfied that they have tried the game of secession and given it up honestly and entirely, and are willing to come back to join in the Government heart and hand, and carry forward its flag, looking to the bright destiny of this nation in the future. The amendment will make the section less proscriptive, diminish the number which fall victims under its rule, and for that reason I shall vote for it. Now is the hour for conciliation, now is the time to trust in the South.

Mr. HENDRICKS. It is proper, perhaps, I should say that I do not expect to vote for the third section whether the amendment which I propose be adopted or not; but I suppose that I understood the purpose of the caucus, from which this amendment came, to be to exclude the men who violated their oath of office when they went into the rebellion, who added moral perjury to the crime of violating their allegiance. I thought the language went further than the caucus intended, and therefore I moved this amendment with a view of confining the section to the very case which I had a right to presume was intended to be met. If my amendment be adopted, it will leave the section to exclude all persons who at the time they went into the rebellion were under the obligation of an official oath to support the Constitution of the United States.

Mr. SHERMAN. I would ask my friend, the Senator from Indiana, whether it excludes those who resigned an office in the United States Army, for instance, for the purpose of going into the rebellion. Does not his

amendment exclude from the operation of the section those who held office under the United States, resigned it, and then went into the insurrection, as in the case of General Lee?

Mr. HENDRICKS. I think not. If the Senator will observe the language he will see that it has not the effect which he fears. I use the words "during the term of his office." A man's term does not expire because he resigns his office. If a man holds an office the term of which the law fixes at four years, the term is four years. If he holds an office during good behavior, the term is thus fixed; the resignation of an officer does not put an end to the term; that is judicially settled. In some of the States, for political purposes, it is provided in the constitution that a man elected to a judicial office shall not, during the term of the office for which he was elected, be eligible to any other office. Judicial officers holding office under a constitution like that have resigned during the term and been elected to other offices, executive, perhaps, in their character, and the courts have always held that they could not take the office to which they were elected when the term of the previous office was fixed by law. That is clear law, I presume, so that I think the word "term" excludes all men who, at the time they went into the rebellion, were under the obligation of an official oath to support the United States Constitution.

Mr. VAN WINKLE. I hope the Senator will make that point clear.

Mr. HENDRICKS. If these words will make it any more conclusive, I am willing to say, "during the term of office for which he was elected or appointed;" but I think the expression "during the term of the office" is equally comprehensive.

Mr. SHERMAN. I do not know that it is worth while to discuss the precise effect of the amendment, because I think the Senator from Indiana is satisfied that his amendment will not prevail; but the objection which occurred to me the moment it was offered was, that it would relieve from the operation of the third section the very men who ought to be excluded from ever hereafter holding office under the United States. Take the case of Senators holding seats as members of this body who resigned their seats here and went directly to the South and took up arms. The term of their office in some cases expired by limitation on the 4th of March after they retired from here, and before they actually took up arms; and yet, on leaving this Senate Chamber, they proceeded to the South and organized rebellion, and they would be relieved from the operation of this section by the amendment of the Senator from Indiana.

So in the case of officers of the Army and Navy, all of whom had sufficient respect for the oath which they had taken to resign their offices and to see carefully that their resignations were accepted, so that the termination of their office was authenticated in the records of the War Department and the Navy Department. Then, having put an end to their offices under the United States, they proceeded to the South and organized rebellion against the Government of the United States. They would, in my judgment, be relieved from the operation of the third section.

But I take it all of us understand the meaning of the third section. It is that, for a time at least, all who have violated not only the letter but the spirit of the oath of office they took when they became officers of the United States, and took the oath to support the Constitution of the United States, shall not, hold office until a state of affairs shall come when two thirds of both Houses may, by a general amnesty, wipe out all these disabilities; and it seems to me that this is a reasonable stipulation, one that the United States may exact. After the attempted revolution in England in 1745, the English Government was considered extremely liberal when, two years after the Pretender had been overthrown by force of arms, all the pains and penalties imposed by Great Britain on his adherents were removed, except the power to hold office; and I believe all who took part in that rebellion were forever disfranchised from holding an office of honor, trust, or profit in the kingdom of Great Britain. It was considered extremely liberal that all the other penalties of treason were removed.

The effect of this section is simply to remove all the penalties that rest on these men for treason except the power to hold office; and if a new generation of men should hold all the offices in the southern States; if the young men who are now growing up should hold all the offices of honor, trust, and profit there, I think no harm would result. If those men who have once taken an oath of office to support the Constitution of the United States and have violated that oath in spirit by taking up arms against the Government of the United States are to be deprived for a time at least of holding office, it is not a very severe stipulation.

Mr. HENDRICKS. I ask for the yeas and nays on my amendment.

The yeas and nays were ordered; and being taken, resulted—yeas 8, nays 34; as follows:

YEAS—Messrs. Buekalew, Davis, Guthrie, Hendricks, Johnson, Riddle, Saulsbury, and Van Winkle—6.

NAYS—Messrs. Anthony, Chandler, Clark, Cowan, Conness, Cragin, Creswell, Doolittle, Edmunds, Pessenden, Foster, Grimes, Harris, Henderson, Howard, Howe, Kirkwood, Lane of Indiana, Lane of Kansas, Morgan, Morrill, Norton, Nye, Poland, Pomeroy, Ramsey, Sherman, Stewart, Sumner, Trumbull,

Wade, Willey, Williams, and Wilson—34.

ABSENT—Messrs. Brown, Dixon, McDougall, Nesmith, Sprague, Wright, and Yates—7.

So the amendment to the amendment was rejected.

Mr. JOHNSON. I move now to amend the amendment by striking out all after "States" in line thirty-five down to the word "State" in line thirty-six. The words which I propose to strike out are "or as a member of any State Legislature, or as an executive or judicial officer of any State. I ask for the yeas and nays on this.

The yeas and nays were ordered.

Mr. COWAN. I am opposed to this section in toto. I am opposed to the infliction of punishment of any kind upon anybody unless by fair trial where the party himself is summoned and heard in due course of law. I am

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as much opposed to a bill of pains and penalties, or to the exercise of judicial power by Congress through the medium of an amendment to the Constitution, as I am opposed to it in an act of Congress where it is expressly forbidden, and in any vote which I give upon propositions to modify this section I do not wish to be understood as being willing to vote for that principle in any event.

The question being taken by yeas and nays, resulted—yeas 10, nays 32; as follows:

YEAS—Messrs. Buckalew, Cowan, Davis, Doolittle, Guthrie, Hendricks, Johnson, Norton, Riddle, and Saulsbury—10.

NAYS—Messrs. Anthony, Chandler, Clark, Conness, Cragin, Creswell, Edmunds, Fessenden, Foster, Grimes, Harris, Henderson, Howard, Howe, Kirk-wood, Lane of Indiana, Lane of Kansas, Morgan, Morrill, Nye, Poland, Pomeroy, Ramsey, Sherman, Stewart, Sumner, Trumbull, Van Winkle, Wade, Willey, Williams, and Wilson—32.

ABSENT—Messrs. Brown, Dixon, McDougall, Nesmith, Sprague, Wright, and Yates—7.

So the amendment to the amendment was rejected.

Mr. JOHNSON. I now move to amend the amendment by striking out in line thirty-three the words "having previously taken" and inserting "at any time within ten years preceding the 1st of January, 1861, had taken;" so as to make it read:

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who at any time within ten years preceding the 1st of January, 1861, had taken an oath as a member of Congress, &c. I ask for the yeas and nays on this proposition.

The yeas and nays were ordered; and being taken, resulted—yeas 10, nays 32; as follows:

YEAS—Messrs. Buckalew, Cowan, Davis, Doolittle, Guthrie, Hendricks, Johnson, Norton, Riddle, and Saulsbury—10.

NAYS—Messrs. Anthony, Chandler, Clark, Conness, Cragin, Creswell, Edmunds, Fessenden, Easter, Grimes, Harris, Henderson, Howard, Howe, Kirkwood, Lane of Indiana, Lane of Kansas, Morgan, Morrill, Nye, Poland, Pomeroy, Ramsey, Sherman, Stewart, Sumner, Trumbull, Van Winkle, Wade, Willey, Williams, and Wilson—32.

ABSENT—Messrs. Brown, Dixon, McDougall, Nesmith, Sprague, Wright, and Yates—7.

So the amendment to the amendment was rejected.

The PRESIDENT *pro tempore*. The question recurs on the amendment of the Senator from Michigan, [Mr. HOWARD,] to insert the words which have been read as the third section of the proposed article of amendment to the Constitution.

Mr. VAN WINKLE. I am induced, by a remark made by the Senator from Ohio, to make an inquiry. I understood him to say that the meaning of the last clause of this section, which clause tends to reconcile me to the whole section, is that there can only be a general removal of the disability by a general amnesty; and although he did not say distinctly that there could not be a removal of the disability in an individual case, I should like to know what is the understanding, at least of the mover of this proposition, in reference to that point. This is to go into our Constitution and to stand to govern future insurrection as well as the present; and I should like to have that point definitely understood. I would suggest, although I do not make the motion, that instead of "two thirds of each House" we should insert "a majority of all the members elected to each House." It strikes me that it is very difficult to get a two-thirds majority unless under very peculiar circumstances on anything, and that a majority of all the members elected to each House, which is being substituted for the two-thirds vote in many of our State

Legislatures, would be sufficient in the present case.

Mr. HOWARD. If I understood the inquiry put by the honorable Senator from West Virginia, it was whether the latter clause in section three would not require a general act to be passed by Congress removing the disabilities in all cases. I do not so understand the clause. I understand that the clause gives to Congress full discretionary power to grant an amnesty in an individual case, when applied for, or a part of the whole. Any portion of persons here proscribed may be pardoned, or rather this disability may be removed as to any portion of them in detail or in gross. In short, I regard it as a discretionary authority given to Congress, to be exercised by Congress in individual instances, or in any other form that Congress may see fit to exercise the power. I entertain no doubt whatever that such will be the construction that will be put upon it.

Mr. VAN WINKLE. I am entirely satisfied with the explanation; but I was induced to make the inquiry by a remark of the Senator from Ohio, who, I supposed, spoke with knowledge, that it only applied to a general amnesty. The language certainly would cover the removal of the disability in individual cases.

Mr. SHERMAN. I did not hear the Senator from West Virginia, and I beg him to repeat his statement.

Mr. VAN WINKLE. I say I am satisfied with the explanation made by the Senator from Michigan; but I had understood the Senator from Ohio while up a few moments ago to give the last clause of this amendment the interpretation that it would not be in the power of Congress to remove the disability in individual cases. I understood the Senator from Ohio to say that Congress would have the power by a general amnesty to remove this disability. The Senator spoke generally. He may not have intended to contradict the other power; and I made the inquiry to be certain on that point.

Mr. SHERMAN. I have no doubt that the larger power includes the other, The power to make a general amnesty would include the power to make an amnesty as to classes or particular individuals. I do not think there is any doubt about that.

Mr. SAULSBURY. I move to amend the amendment by inserting after the word "House" in the fortieth line, the words "and the President may by the exercising of the pardoning power;" so as to make the clause read:

Congress may by a vote of two thirds of each House, and the President may by the exercise of the pardoning power, remove such disability.

Mr. HOWARD. I hope that amendment will not be adopted.

Mr. SAULSBURY. I call for the yeas and nays upon it.

The yeas and nays were ordered; and being taken, resulted—yeas 10, nays 32; as follows:

YEAS—Messrs. Buckalew, Cowan, Davis, Doolittle, Guthrie, Hendricks, Johnson, Norton, Riddle, and Saulsbury—10.

NAYS—Messrs. Anthony, Chandler, Clark, Conness, Cragin, Creswell, Edmunds, Fessenden, Foster, Grimes, Harris, Henderson, Howard, Howe, Kirk-wood, Lane of Indiana, Lane of Kansas, Morgan, Morrill, Nye, Poland, Pomeroy, Ramsey, Sherman, Stewart, Sumner, Trumbull, Van Winkle, Wade, Willey, Williams, and Wilson—32.

ABSENT—Messrs. Brown, Dixon, McDougall, Nesmith, Sprague, Wright, and Yates—7.

So the amendment to the amendment was rejected.

The PRESIDENT *pro tempore*. The question recurs on the amendment offered by the Senator from Michigan to insert certain words as the third section.

Mr. HOWARD. I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. DOOLITTLE. I will state briefly why I cannot vote for this amendment as a substitute for the third section of the resolution which has been stricken out. My first reason is that by a law of Congress now all persons mentioned in this section are excluded from holding any of these offices. The oath that is required by a law of Congress to be taken by every person holding an office under the United States

Mr. TRUMBULL. Does that prevent their holding a State office?

Mr. DOOLITTLE. No; it does not prevent the holding of a State office, but it prevents them from holding any office under the Government of the United States, and that is as far as I think we ought to go. No person can be a Senator or Representative in Congress, or an elector of President and Vice President, or hold any office, civil or military, under the United States, under the law as it now stands, who does not take an oath that he has not participated in the rebellion. The oath which we require at their hands prevents any such persons from holding any such offices. That law is upon our statute-book. That law will remain upon the statute-book just as long as Congress in its judgment shall think best to retain it. And, sir, there is, in my judgment, no danger whatever, no apprehension, that that law will be taken from our statute-book so long as the public interests require that it should

there remain. Therefore, in my judgment, it is not necessary to adopt any such constitutional amendment, because this amendment contains a clause putting it in the power of Congress to put an end to the effect of this provision. It is true that it requires two thirds of Congress in order to do it, whereas under the law as it now stands a majority of Congress could change the existing law on that subject. What I maintain is this: Congress is the representative of the American people; Congress speaks the will of the American people, and I do not think that it is in accordance with our system of government, which presumes that Congress speaks for the people, to suppose that a majority of Congress will repeal this oath until a majority of the people of the United States are in favor of doing so; and when a majority of the people are in favor of universal amnesty they have a right to express that opinion and to have universal amnesty.

I undertake to say that upon no principle of statesmanship or Christianity, whether you derive your conclusions from the experience of history, the teachings of Christianity, or the teachings of a wise statesmanship, can you desire to retain in this country any considerable portion of its people who shall be under the ban of eternal proscription. What, Mr. President, is the duty of the Government, having suppressed the rebellion? It is to punish the guilty leaders under the law of the land; it is to bring them to punishment; and the duty of Congress is, if there is anything which stands in the way and which Congress can remove, to pass such laws as may expedite the trials of the great offenders. The great offenders should be tried and punished. and those that you do not try and do not punish should not be held under proscription, the unrelenting, eternal enemies of the Republic.

Again, Mr. President, this provision, if it passes, will have the effect of putting a new punishment, not prescribed by the laws, upon all those persons who are embraced within its provisions. Nobody can doubt that. It is in the nature of a bill of pains and penalties, imposed by constitutional enactment it is true, but it is a punishment different from the punishment now prescribed by law. What is the effect of adopting it? What is the legal effect of adopting a new punishment for an offense which has already been committed? It repeals the old punishment, and that cannot be inflicted. If today the punishment for the crime of murder is death, and tomorrow you change your punishment to imprisonment for life, the old penalty is repealed; it cannot be inflicted upon a culprit who has been guilty previous to the passage of the law. Such has been decided by the courts many times to be the law; and if by a constitutional amendment you impose a new punishment upon a class of offenders who are guilty of crime already, you wipe out the old punishment as to them, not as to those who are not embraced within this. This only embraces a particular class of individuals who have taken an oath to support the Constitution of the United States. Now, I do not propose to wipe out the penalties that these men have incurred by their treason against the Government; but I would punish a sufficient number of them to make treason odious. I would punish the leaders, those who were instrumental in bringing on this rebellion; but to the masses I would give amnesty.

Mr. NYE. How many would you like to hang?

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Mr. DOOLITTLE. The Senator himself stated the other day that five or six would be enough to hang.

Mr. NYE. Do you acquiesce in that?

Mr. DOOLITTLE. I think I ought to be satisfied if the Senator from Nevada is satisfied with five or six,

But, Mr. President, I have another objection which weighs, perhaps, still more upon my mind than those I have stated. The insertion of this section into this constitutional amendment, if these provisions are not to be submitted separately, tends to prevent the adoption of the amendment by a sufficient number of States to ratify it. You say every day that you cannot get a jury under the laws of several of the States, Virginia and others; that today the state of public opinion is such that you cannot get a jury who would convict a person of crime, and yet you propose to submit this constitutional amendment to be passed upon by the people of those States to determine the question whether they will adopt a constitutional amendment upon a popular vote, which constitutional amendment on its face declares that all of those men who have ever taken an oath to support the Constitution of the United States are forever to be excluded from holding office under the United States or within the State unless two thirds of Congress will consent to give them the privilege.

Sir, what States will adopt it? It is possible that some one, two, perhaps three, of those States to be affected by this amendment may adopt it.

Mr. LANE; of Kansas. Four will accept that part of it.

Mr. DOOLITTLE. What four?

Mr. LANE, of Kansas. Virginia, Tennessee, Arkansas, and Louisiana. I saw some gentlemen on Monday from Tennessee, and talked with them about this particular clause, and they told me it would be the most popular thing that could be tendered. And the very men that you want to hang ought to accept it joyfully in lieu of their hanging.

[Laughter.]

Mr. DOOLITTLE. The Senator from Kansas, perhaps, has information on this subject that other Senators do not possess.

Mr. LANE, of Kansas. I saw those gentlemen on Monday.

Mr. DOOLITTLE. I do not know who those particular gentlemen were. Were they the gentlemen that deserved hanging or not? [Laughter.]

Mr. LANE, of Kansas. They were conservatives from Tennessee.

Mr. DOOLITTLE. Mr. President

Mr. SHERMAN. If it will not interrupt my friend from Wisconsin I should like to ask him a question, whether there is in history an example of an insurrection of the most ordinary character terminating with no punishment to any man, no deprivation of property, no deprivation of franchise, no deprivation of any right whatever except the right to hold office; whether ever more generous terms were held out to persons who had been engaged in insurrection than are here proposed?

Mr. DOOLITTLE. I understand, then, my friend, the Senator from Ohio, to admit that adopting this section does away with all further punishment.

Mr. SHERMAN. No; I do not think this will prevent your hanging four or five.

Mr. DOOLITTLE. I understood the Senator by his question to admit that adopting this repeals all other penalties as against the men included within the section.

Mr. SHERMAN. Not at all. If the Senator wants to take the blood of four or five I am perfectly willing.

Mr. DOOLITTLE. Mr. President, I deem this entirely unnecessary, as I stated at the beginning. I deem it as the adoption of a new punishment as to the persons who are embraced within its provisions, and therefore the abolition of the existing punishment; and I deem it as tending to prevent the adoption of the amendment by a sufficient number of States to secure the ratification of the other part of the constitutional amendment. If this is to be inserted as a part of the amendment, to be submitted as a part and parcel of the whole, so that the whole must be taken together and the different sections shall not be acted upon separately, it will tend to prevent its adoption, and preventing its adoption has no other tendency or effect than to keep open this difficulty for years to come.

Mr. TRUMBULL. I do not suppose we shall get any vote on this matter to-night. If I thought so I should not take up any time; but I can hardly forbear saying a word or two in reply to the Senator from Wisconsin, [Mr. DOOLITTLE.] They seem to have peculiar notions in Wisconsin in regard to offices, and the Senator who has just taken his seat regards it as a punishment that a man cannot hold an office. Why, sir, how many suffering people there must be in this land! He says this is a bill of pains and penalties because certain persons cannot hold office; and he even seems to think it would be preferable in some instances to be hanged. He wants to know of the Senator from Ohio if such persons are to be excepted. This clause, I suppose, will not embrace those who are to be hanged. When hung they will cease to suffer the pains and penalties of being kept out of cinch. I recollect having seen in the newspapers — I do not know whether it is true or not; I very seldom allude to newspaper articles — but I saw in some of the newspapers that an officer of this Government, who was supposed to control some patronage in the minor offices of the country, spoke of the officers as "eating the bread and butter of the Presidents" I recollect the Senator from Wisconsin himself in a speech some days ago, spoke of the President's officers. The President has got no officers.

Mr. DOOLITTLE. I never stated that.

Mr. TRUMBULL. The Senator spoke of their being responsible to the President.

Mr. DOOLITTLE. So I did, and that is a fact.

Mr. TRUMBULL. How so?

Mr. DOOLITTLE. They are responsible to the President.

Mr. TRUMBULL. They are responsible to the law of the land and not to the President. Mr. DOOLITTLE rose.

Mr. TRUMBULL. Let the Senator keep cool. I undertake to say that a person holding office, who does not acknowledge his responsibility to the law and his oath of office, but to a President, is not fit to be an officer. No officer is responsible to the President, but his responsibility is to the law under which he acts. The President is not omnipotent in this country. He does not create offices; he cannot appoint an individual to the humblest office in the land except in pursuance of the Constitution and the law. He himself is responsible to the Constitution and the law, and so is the most inferior postmaster in the land. This idea that the offices of this country belong to the President, that men eat his bread and butter, is very erroneous. Why, sir, the President feeds nobody. It is derogatory to the position of any man who holds an office to talk of his eating the bread and butter of the

President and being responsible to the President and not to his oath of office, to the law and the Constitution.

Why, sir, who ever heard of such a proposition as that laid down by the Senator from Wisconsin, that a bill excluding men from office is a bill of pains and penalties and punishment? The Constitution of the United States declares that no one but a native-born citizen of the United States shall be President of the United States. Does, then, every person tiring in this land who does not happen to have been born within its jurisdiction undergo pains and penalties and punishment all his life, because by the Constitution he is ineligible to the Presidency? This is the Senator's position.

But he tells us that there is no necessity for this clause; and why? Oh, we have a law that excludes from office every one of these individuals. Have we? How long is it since the Senator from Wisconsin stood up in this body and with loud voice proclaimed to the Senate and the nation that each House should judge for itself whether members should be admitted into the body, and that Congress had no right to decide upon it? Now he tells us that we have a law which excludes all these persons from office, and he does not want it in the Constitution. How long is it since he argued and urged here that the Senate should decide for itself whether the rebellious States were fit to be represented or not? Today he tells us we have a law which prevents each House from admitting disloyal persons. I am glad the Senator is disposed to obey the law; and I trust we shall hear no more of his saying that it is for the Senate exclusively to decide, irrespective of law, whether persons are to be admitted to seats.

I know that each House is the judge of the elections, the qualifications, and the returns of its own members under the Constitution; but each House is not made the judge of whether there is a constituency authorized to representation or not. That is a question proper to be decided by the joint action of both Houses. Each House may have the physical power to decide it, but Senators have no right to vote that the representatives of Maximilian in Mexico, of Napoleon in France, or of the people of Canada, shall be admitted to seats here; and they have just as little right to admit the representatives of any other people not recognized by law as entitled to representation, as they have to admit representatives from Mexico, or France, or Canada. But the Senator says that this provision excluding leading rebels from office will not be accepted in the South. Sir, has it come to this, that the leaders of the infamous rebellion who undertook to overthrow the Government, who marshaled armies and maintained a war against it for four or five years, when put down by force of arms cannot be deprived of the privilege of holding offices? The Senator says the South will not accept it; but, sir, they have gone further than this in Maryland, in Tennessee, in West Virginia, in Missouri. Everywhere in the South where loyal men have the control they not only exclude the leading traitors from office, but also from the right of suffrage.

Mr. LANE, of Kansas. And so in Arkansas.

Mr. TRUMBULL. In Arkansas also, I am reminded by the Senator from Kansas. Sir, the object of this provision is to place these rebellious States in the hands of loyal men. Is the Senator from Wisconsin opposed to it? Does he want to put the control of these States in the hands of disloyal men? If he does not, then vote for this provision. That is all there is to it, and if the time ever comes, as I trust it will, when these leaders shall be cured of their malignity toward the Union, when they shall be willing to treat loyal men and Union men fairly and justly, it will be in the power of Congress to remove the disability; and if the people of these localities are then willing to trust the repentant rebels they can elect them to office. So, it is intended to put some sort of stigma, some sort of odium upon the leaders of this rebellion, and no other way is left to do it but by some provision of this kind. The Senator wants it in a law. Sir, what would it be good for in a law? So far as the members of this body and of the other House are concerned, the Constitution of the United States has provided the qualifications for a Senator and for a Representative, and it has been held more than once that it is incompetent to add to those qualifications by law. You may do it by a change of the Constitution, and hence the propriety of putting it here. The test oath is a different thing. The oath does not go to the qualification, but to the discharge of the duties subsequently, and the requirement of the oath may be constitutional when a direct disqualification imposed by law would not be constitutional.

That is a proposition, however, which I do not propose to argue at this time. I rose merely to repel the idea that it was imposing

pains and penalties to deprive a man from-holding office. I rose to repel the idea that the offices of this country belonged to the President, and that men who held them were living upon his bounty; to show that the oath was not a sufficient protection; and that to have the proper protection against leading rebels being elevated to office, not by Union men but by the rebels, it was necessary to insert a clause of this kind. We find that every southern State which is in the hands of loyal men, although it may have been formerly engaged in this rebellion, has not only

excluded from office, but from the right of suffrage also, all the leading traitors ; and, sir, I apprehend that this proposition will be a popular provision with loyal men, and how the disloyal regard it is not a matter of so much consequence.

Mr. DOOLITTLE. Mr. President — Mr. HENDRICKS. If the Senator will yield I will move an adjournment.

Mr. GRIMES. Let us go into executive session.

Several SENATORS. It is too late.

Mr. HENDRICKS. If there is any business in executive session desirable to be done, I will give way.

Mr. GRIMES. I move that the Senate proceed to the consideration of executive business. ["No, no; it is too late."])

The PRESIDING OFFICER, (Mr. POMEROY in the chair.) The Senator from Iowa moves that the Senate proceed to the consideration of executive business.

Several SENATORS. Let us adjourn.

The question being put on Mr. GRIMES'S motion, a division was called for.

Mr. SHERMAN. If there is any controversy about it, I move that the Senate adjourn.

The motion was agreed to; and the Senate adjourned.

RECONSTRUCTION.

The Senate, as in Committee of the Whole, resumed the consideration of the joint resolution (H. R. No. 127) proposing an amendment to the Constitution of the United States, the pending question being on the amendment of Mr. HOWARD to insert as section three of the proposed article of constitutional amendment the following:

That no person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two thirds of each House, remove such disability.

Mr. DOOLITTLE. Mr. President, I thank the Senate for its kindness in postponing the consideration of this resolution last evening until the present moment. The hour was late and I was somewhat weary; and more, at the moment, from the manner and tone of my friend from Illinois, perhaps, than anything else, I confess that I felt some little degree of resentment, but that has passed. I know my friend from Illinois so well, and have known him so long, that it is but just to him and myself to say that I know very well that under that tone which he sometimes assumes in debate, apparently of anger, so provoking to a stranger, nothing of the kind is, in fact, intended. Sir, the moment has passed, and with it all feeling of resentment. I shall address myself to the ideas to which he gave utterance in reply to some points which I had briefly stated in objection to this amendment.

He began by saying that there were some peculiar ideas in Wisconsin, he thought. Now, I assure my friend that no ideas are prevalent there, that I am aware of, which do not prevail also in Illinois and the adjoining States. Among others, he referred to what has been referred to before, a certain statement alleged to have been made by the First Assistant Postmaster General, formerly Governor of the State of Wisconsin. It so happens that since last evening's discussion I met Governor Randall, and he authorized me to say to my friend from Wisconsin [Illinois] that the remark to which he refers is not correct, that the statement is false, and therefore those who repeat it are giving currency to a falsehood unjust to him.

Mr. HOWE. Was that remark addressed to me — your "friend from Wisconsin?"

Mr. DOOLITTLE. I meant to say "my friend from Illinois." It was my friend from Illinois who made the remark yesterday.

Mr. TRUMBULL. I believe I stated that I had seen some statement in the papers in regard to it, and I think I said I did not know whether it was true or not.

Mr. DOOLITTLE. I did not understand the Senator from Illinois to vouch for the truth of it. What I state is, that the First Assistant Postmaster General authorizes me to say that the statement to which the Senator referred as circulating is false.

Mr. TRUMBULL. I know nothing about the statement, any further than that I saw it in the papers.

Mr. DOOLITTLE. Of course I do not intend to say that what the Senator stated, that he saw it in a newspaper, is false — not at all, but that the statement circulating in reference to Governor Randall was a false statement. My friend from Illinois also made a remark in relation to what I said on a former occasion which I think was not warranted by what I said. I stated that executive officers were responsible to the President as the chief executive officer of the Government. My friend from Illinois seems to think that because I made this statement that they are responsible to the President, because he under the Constitution has placed upon him the responsibility of seeing that the laws are faithfully executed, I intended to say that these men were subject merely to the will of the Executive and not to the laws of the land. Not at all, sir. The responsibility of the Executive is to see that those men who are exercising executive functions under him faithfully execute the laws of the land.

And, sir, is that an idea peculiar to Wisconsin? I think that is a fundamental idea well understood, and has been from the beginning of the Government, that the President being the chief Executive and sworn under the Constitution to see that the laws are faithfully executed, executive officers who are under him are responsible to him in that sense that he must see that they faithfully discharge their duties.

Now, Mr. President, enough on this question which has no bearing whatever on the subject before the Senate.

Mr. HOWE. My colleague will indulge me—

Mr. DOOLITTLE. If my colleague will allow me to conclude, I desire to leave all these personal matters and go on simply with the consideration of the question before the Senate.

Mr. HOWE. I simply want to know precisely what the contradiction is which is made here in behalf of the

First Assistant Postmaster General. I understand him to deny the truth of a statement made yesterday by the Senator from Illinois. The statement made by the Senator from Illinois, I think, has some reference to a declaration of mine made here some time previous. I should like to know what the precise issue is. Here is one remark made by the Senator from Illinois yesterday, as printed in the Globe:

"I recollect having seen in the newspapers — I do not know whether it is true or not; I very seldom allude to newspaper articles — but I saw in some of the newspapers that an officer of this Government, who was supposed to control some patronage in the minor offices of the country, spoke of the officers as 'eating the bread and butter of the President.' I recollect the Senator from Wisconsin himself, in a speech some days ago, spoke of the 'President's officers.'"

Is it denied by the First Assistant Postmaster General that he has spoken of officers as " eating the bread and butter of the President?" Is that the statement which is denied?

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Mr. DOOLITTLE. The statement that I made was that I had seen the First Assistant Postmaster General, and that in conversation, alluding to that subject, he had authorized me to state that that rumor or statement which was circulating in the newspapers is not true, that it is false.

Mr. HOWE. The language substantially as used by the Senator from Illinois yesterday, I believe, was first introduced here by myself. I stated here that I had been told that the First Assistant Postmaster General had declared that no man should eat the bread and butter of the President unless he sustained his policy. That is as near as I remember the language. I made that statement upon the authority of a member of the House of Representatives. I met the First Assistant Postmaster General in the evening after I had made that remark. He did not call its correctness in question; but when I returned to my boarding-house, I found a note from him asking me upon what authority I made that statement. I replied to him, saying I made it upon the authority of the Representative of the fifth district of the State of Wisconsin, since which I have heard nothing from him or any one else questioning the accuracy of that statement until this remark was made here by my colleague.

Mr. DOOLITTLE. I have stated what he authorized me to state on that subject. Of course I personally do not undertake to state the fact one way or another.

But enough, sir, on that subject of personalities. I wish to call the attention of the Senate to the question involved in the amendment. I stated in the course of my remarks yesterday that the oath which Congress required all officers under the Government of the United States to take, so long as that oath remained unrepealed by law, effected all that is effected by this amendment. It excludes those who cannot take it from entering upon any office under the Government of the United States. Of course the oath does not refer to State officers. As to State officers, this proposed amendment goes further than that oath; but as to all Federal officers, the oath required to be taken by them, that they have not engaged in this rebellion against the Government of the United States, is as effectual, so long as that law stands unrepealed, as this amendment would be.

The Senator from Illinois, in reply to this, says that it is a new doctrine in me to maintain that members of Congress should obey the laws of the land and take the oaths which are prescribed by law before they are entitled to admission; that I have contended that each House was to judge for itself of the qualifications, elections, and returns of its members; and that in that judgment each House was independent of the other. Mr. President, I have contended that each House is the judge, and the sole judge, the judge without appeal, the judge over whom neither the President nor the Supreme Court nor the other House has any rightful control whatever. But does the Senator from Illinois suppose that I ever maintained that the House of Representatives or the Senate, in making up its judgment, should violate the laws of the land? Such an idea never entered into my brain, I can assure the Senator from Illinois. I supposed that the Senate of the United States would judge according to law. Has it come to this, that because I insist that the Senate of the United States shall judge upon the elections, qualifications, and returns of its members, I have any idea that the Senate will undertake to violate the laws of the land or repeal the laws of the land? I never heard such an idea suggested by any human being. I never thought that it could enter into the mind of any human being. I have confidence in the judgment of the Senate, that the Senate will judge right, that the Senate will judge as a tribunal authorized by the Constitution to judge, and to which is given the sole judgment on that question. I think, therefore, that the remark of the Senator from Illinois, that he was glad that I was now disposed to obey the laws, was a remark which was not called for by anything I have ever uttered on this floor or elsewhere. I am just as much in favor of maintaining the laws and the Constitution as the Senator from Illinois possibly can be, and I have always maintained the validity of this oath, under the Constitution, which was required. As to the President of the United States, his oath is specified in the Constitution; and as the Vice

President, in the event of the resignation or death of the President, is to exercise the same office, the only doubt I have ever had was whether the Vice President ought not to take the same oath as the President; whether we can prescribe to the Vice President a different oath from what the Constitution requires us to prescribe to the President. That is the only doubt I have ever had, and that is a question upon which I have doubts, for the reason I have stated, because the Vice President, in a certain contingency, is to take the place of the President, and to act in his stead. But, sir, that is not a question arising here.

I maintained, further, that this proposed amendment prescribes a new punishment for an offense which has already been committed. My honorable friend says that this is not punishment; that that idea must be peculiar to Wisconsin; that to pass a law or the sentence of a court or the decree of any tribunal which shall deprive a person of an office, or which shall disqualify him forever to hold an office is not a punishment. Sir, this idea is by no means peculiar to Wisconsin. There is not a State in this Union where, in some of the criminal statutes, is not to be found, as a part of the penalty attached to the crime which has been committed, a disqualification in certain cases to hold an office; and in cases of impeachment before this body, the highest tribunal known to the laws of the land, when the judgment of this body is pronounced, it is confined by the Constitution to that very thing, removal from office and disqualification from ever holding office, after the judgment of the Senate sitting as a court of impeachment. The Constitution says:

"Judgment in cases of impeachment shall not extend further than removal from office and a disqualification to hold and enjoy any office of honor, trust, or profit under the United States."

In the State of Illinois, in the State of Wisconsin, and other States, there are criminal statutes, in which, on the commission of certain offenses, a part of the punishment which is imposed by express statute is made the deprivation of this right to hold an office, disqualification forever to hold an office. It is part and parcel of the judgment in a criminal case. It carries that effect with it. Many of the States provide that when a person has been convicted of an offense amounting to a felony he shall not only be deprived of the right to hold office, but the right to vote as a citizen; his citizenship is forfeited. Sir, this is a penalty, a new penalty, an additional penalty imposed after the fact has transpired, after the crime has been committed. Where a new punishment is provided by law for an offense which has already been committed, unless the law which provides for it expressly saves it, the old penalty is gone. Such is the decision of all criminal courts in all States and countries. You cannot change the punishment of the offense without wiping out the old penalty, and here, sir, if you insert by way of a constitutional amendment this *ex post facto* provision, a bill of attainder, for it is nothing more nor less, it wipes out the old penalty, and all the penalties which attach will be the penalties which attach under this provision, unless the provision itself provides for saving the old penalty.

But, Mr. President, there is another objection to this proposed amendment as it stands. This amendment applies equally to those who were forced into the rebel service as to those who went in voluntarily. I call the attention of Senators to the fact that the men who were conscripted into the rebel service, men who were carried into it at the point of the bayonet, men who were hunted all over the States of the South by the myrmidons of this rebellion to compel them to enter the service, are just as much subjected to penalties under this amendment as those who went into it of their own free will. Mr. President, has it come to this, that in this high place and in this body, we can make no distinction between the innocent and the guilty; no distinction in favor of those men who have been hunted like wild beasts from valley to valley all over the States of the South, and forced, conscripted, compelled to go into the service against their will, but that they are to stand upon precisely the same ground with the men who were guilty of this offense from the beginning? Sir, public judgment revolts against the proposition, and the conscience and the humanity of the American people will stamp this proposition as being in violation of every principle of justice and against the humanity of the age. It is beyond belief that the Senate of the United States proposes to treat these men who have been hunted, conscripted, and forced at the point of the bayonet to go into the rebellion, as if they were equally guilty with the leaders of the rebellion.

Mr. President, I speak of the injustice of the proposition in this respect. What hope is there that a proposition like that will receive the sanction of the American people? None whatever. It ought not to receive their sanction, for it is founded in injustice, that injustice which annihilates the distinctions between innocence and guilt, between the men who have suffered, and suffered more than the men of the North have suffered; who have been conscripted, forced into the rebellion, and compelled at the point of the bayonet to do its bidding, and the men who went into it of their own free will. Sir, it is perhaps predestined that this resolution must pass in this form. It has perhaps passed through one of those consultations where results are arrived at that no considerations can change. Nothing can modify it. It must be, like the decrees of fate, accomplished. But, sir, it does seem to me that this Senate ought to pause before they abolish all distinction in the southern States between those who were

forced into the rebel army and those who went in of their own free will.

But, sir, there is another objection to this amendment as it stands. It proposes to annul in some cases the pardons and amnesties which have already been granted under the laws of Congress, and the proclamations of the President issued in pursuance thereof. Are we prepared to do that? Can this Congress stand before this country and the civilized world and say, "We authorized the President of the United States by proclamations to declare full amnesty and pardon upon certain terms and conditions; that amnesty and pardon has been extended; the oaths of allegiance have been taken; these men have in good faith accepted the conditions of the pardon and amnesty; and yet Congress proposes by a constitutional amendment to annul those pardons and wipe out that amnesty?" On what kind of principle can we stand before the civilized world and do that? That I may make no mistake I desire to read the section of the statute which authorized both President Lincoln and President Johnson to grant pardon and amnesty to those who had taken part in the rebellion. On the 17th of July, 1862, Congress enacted in these words:

"That the President is hereby authorized, at any time hereafter"—

No limitation as to time—

"by proclamation, to extend to Persons who may have participated in the existing rebellion in any State or part thereof, pardon and amnesty, with such exceptions and at such time and on such conditions as he may deem expedient for the public welfare."

Now, Mr. President, independent of that authority which the Constitution confers upon the President as the chief Executive to issue pardons to persons who are guilty of offenses against the laws of the United States, here is an express provision enacted by Congress,

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authorizing the President, as he should deem expedient for the public welfare, to grant amnesty and pardon to those who had been engaged in this rebellion. In pursuance of this statute, Mr. Lincoln, President of the United States, in December following the passage of this law did issue a proclamation granting pardon and amnesty to persons who had been engaged in this rebellion, upon the terms and conditions therein specified. I read from that proclamation:

'Whereas in and by the Constitution of the United States it is provided that the President 'shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment;' and whereas a rebellion now exists whereby the loyal State governments of several States have for a long time been subverted, and many persons have committed, and are now guilty of, treason against the United States; and whereas, with reference to said rebellion and treason, laws have been enacted by Congress, declaring forfeitures and confiscation of property and liberation of slaves, all upon terms and conditions therein stated, and also declaring that the President was thereby authorized at any time thereafter, by proclamation, to extend to persons who may have participated in the existing rebellion, in any State or part thereof, pardon and amnesty, with such exceptions and at such times and on such conditions as he may deem expedient for the public welfare; and whereas the congressional declaration for limited and conditional pardon accords with well-established judicial exposition of the pardoning power; and whereas, with reference to said rebellion, the President of the United States has issued several proclamations, with provisions in regard to the liberation of slaves; and whereas it is now desired by some persons heretofore engaged in said rebellion to resume their allegiance to the United States, and to reinaugurate loyal State governments within and for their respective States: Therefore,

I, Abraham Lincoln, President of the United States, do proclaim, declare, and make known to all persons who have, directly or by implication, participated in the existing rebellion, except as hereinafter excepted, that a full pardon is hereby granted to them and each of them, with restoration of all rights of property, except as to slaves."

The conditions were the taking of a certain oath which is herein mentioned, and which it is not necessary that I should read. Now, the persons who were excepted from the benefits of this pardon and amnesty granted by President Lincoln, were as follows:

"The persons excepted from the benefits of the fore-going provisions are all who are, or shall have been, civil or diplomatic officers or agents of the so-called confederate government; all who have left judicial stations under the United States to aid the rebellion; all who are, or shall have been, military or naval officers of said so-called confederate government above the rank of colonel in the army or of lieutenant in the navy; all who left seats in the United States Congress to aid the rebellion; all who

resigned commissions in the Army or Navy of the United States and afterwards aided the rebellion; and all who have engaged in any way in treating colored persons, or white persons in charge of such, otherwise than lawfully as prisoners of war, and which persons may have been found in the United States service as soldiers, seamen, or in any other capacity."

All these classes of persons were excepted from this pardon and amnesty; but the constitutional amendment now proposed to be inserted includes very many of those persons to whom pardon and amnesty were extended under the Constitution and laws of the United States by President Lincoln. Now, I ask, by what right do you undertake to annul that amnesty and take away that pardon? Is it upon the ground that might gives right, and that if by any proceeding the Constitution of the United States can be amended so as in effect to work an *ex post facto* attainder of men to whom pardon and amnesty have been extended, you will do it?

Mr. MORRILL. Will the Senator allow me to ask him a question?

Mr. DOOLITTLE. If it is right on this point.

Mr. MORRILL. Are we to understand the Senator to maintain that amnesty and pardon necessarily relieve from all civil disabilities, and grant restoration of all civil rights?

Mr. DOOLITTLE. I think so, undoubtedly. I think undoubtedly that where an offense is committed by any person against the laws of the United States, and the President, in pursuance of the Constitution and laws, grants full pardon and amnesty to the offender, he is restored to his position as a citizen to all intents and purposes.

Mr. JOHNSON. The honorable member perhaps might state it in this way: one of the acts we have passed during the rebellion provides that for the offenses stated in that act a person may be indicted and tried and punished, and it provided, as a part of the punishment, for his exclusion from the right to hold office. Now, I submit to my friend from Maine whether if one has been, convicted under that act, and has been adjudged to suffer that punishment, and the President then should pardon him the pardon would not remove the disability consequent upon that judgment.

The question in relation to the general effect of the pardoning power of the President has been discussed in the Supreme Court, so far as the exercise of that power concerns the obligation to take the oath which we have prescribed for permission to practice in the courts of the United States. The Senate will remember that the same oath which we take here every lawyer is required to take before he can practice in the courts of the United States. The validity of that act, as far as counsel is concerned, was one of the questions which were argued and reargued by direction of the court at the last term; and as the two gentlemen who applied to practice without taking the oath had been pardoned by the President, another question was argued, whether the effect of the pardon was not to exempt them from the obligation to take the oath, and upon that question, I have reason to believe, the Supreme Court was divided. Certainly, from all accounts, four of the judges thought that the pardon did operate as an exemption, and one doubted; and the question is now held under advisement, to be settled the one way or the other when the Supreme Court meets; but the authorities cited — I have not them in my memory exactly — went very far, as I thought, to prove that the operation of the pardon was to clear the party pardoned from the obligation to take that oath; and that upon the ground that the oath itself excluding a party from the privilege of practicing in the courts of the United States was in the nature of a penalty.

Mr. HOWE. Mr. President—

Mr. GRIMES. Let me say one word.

Mr. DOOLITTLE. All this is in my speech.

Mr. HOWE. I wish the Senator from Maryland, as he was giving us the state of the authorities on this question, would tell us whether he knows of any authority which has gone to the extent of declaring that either an amnesty or a pardon can impose any limitation upon the power of the people of the United States through an amendment of their Constitution to fix the qualifications of officers.

Mr. JOHNSON. That is not the question to which I spoke; it is quite another inquiry. I was speaking of the operation of a statute.

Mr. HOWE. But it is the question which the Senator from Maine was suggesting.

Mr. GRIMES. The Senator from Wisconsin [Mr. Howe] has hit at the very suggestion which I was about to make. It may be, and probably is, that in the case put by the Senator from Maryland, where the disability to hold future office was attached to the commission of a crime which had been proved against the party, that would be regarded as a part of the penalty; but the fallacy of the Senator from Wisconsin [Mr. DOOLITTLE] is, that he assumes that this disability embodied in the third section is as a penalty for an offense committed. It is intended as a prevention against the future commission of offenses, the presumption being fair and legitimate that the man who has once violated his oath will be more liable to violate his fealty to the Government in the future.

Mr. MORRILL. Before the honorable Senator from Wisconsin proceeds, I trust he will allow me a moment as I seem to have been misunderstood. I did not intend to interrupt the line of his remarks; but I did intend to bring to his mind the question whether he recognized what I regard as an obvious distinction between the penalty which the State affixes to a crime and that disability which the State imposes and has the right to impose against persons whom it does not choose to intrust with official station. That was the distinction, and I wished to see if the honorable Senator recognized it.

Mr. DOOLITTLE. The question of the effect of the pardon upon men who have been convicted of offenses is pretty well understood by all who are familiar with judicial proceedings. We all know that if a man is convicted of felony a full pardon restores him to his civil rights. He may be pardoned on condition that he shall not be restored to his civil rights; and if the pardon expresses that condition it is good. He may be pardoned out of the State prison on the condition that he shall leave the State. He may be pardoned out on the condition that he shall not be restored to his civil rights as a citizen, his right to vote and hold office. But when an unlimited, unconditional pardon is given it covers the whole ground. The question in regard to lawyers is altogether a different case from the case of a man who has committed an offense, because to practice law is the lawyer's business, his profession, he lives by it, and to take it from him is to deprive him of a valuable thing. The other is a question which goes to disability as to civil rights growing out of the commission of a crime.

I have said, Mr. President, that Mr. Lincoln's proclamation specified certain persons that were excepted from the operation of the amnesty which he granted. Mr. Johnson after he became President, on the 29th of May, 1865, in pursuance of the statute which I have read, and which gave him full authority to act in the case and to specify the terms and conditions upon which amnesty and pardon should be given, issued a proclamation in which he used the following language:

"Whereas the President of the United States, on the 8th day of December, A. D. 1863, and on the 26th day of March, A. D. 1864, did, with the object to, suppress the existing rebellion, to induce all persons to return to their loyalty, and to restore the authority of the United States, issue proclamations offering amnesty and pardon to certain persons who had directly or by implication participated in the said rebellion; and whereas many persons who had so engaged in said rebellion have, since the issuance of said proclamations; failed or neglected to take the benefits offered thereby; and whereas many persons who have been justly deprived of all claim to amnesty and pardon thereunder, by reason of their participation directly or by implication in said rebellion, and continued hostility to the Government of the United States since the date of said proclamation, now desire to apply for and obtain amnesty and pardon:

"To the end, therefore, that the authority of the Government of the United States may be restored, and that peace, order, and freedom may be established, I, Andrew Johnson, President of the United States, do proclaim and declare that I hereby grant to all persons who have, directly or indirectly, participated in the existing rebellion, except as hereinafter excepted, amnesty and pardon, with restoration of all rights of property, except as to slaves, and except in cases where legal proceedings, under the laws of the United States providing for the confiscation of property of persons engaged in rebellion, have been instituted; but upon the condition, nevertheless, that every such person shall take and subscribe the following oath, (or affirmation,) and thenceforward keep and maintain said oath inviolate; and which oath shall be registered for permanent preservation, and shall be of the tenor and effect following, to wit:

I, _____ do solemnly swear, (or affirm,) in presence of Almighty God, that I will henceforth faithfully support, protect, and defend the Constitution of the United States, and the Union of the States thereunder: and that I will in like manner abide by and faithfully support all laws and proclamations which have been made during the existing rebellion with reference to the emancipation of slaves. So help me God.' "

Mr. President, the question is sometimes asked, where did Mr. Johnson, as President, get the power to prescribe any such condition as this? Here is the statute, in the twelfth volume of the Statutes-at-Large, page 592, in which Congress in express terms declared that he should have power to grant pardon and amnesty "with such exceptions, and at such time, and on such conditions as he may deem expedient for the public welfare." He deemed it expedient for the public welfare, in granting this pardon and amnesty, to require of those who accepted it that they should take that oath. He had authority, under the statute, to prescribe it as one of the conditions of the amnesty granted; and the oath is, that henceforth they will faithfully support and defend the Constitution of the United States and the Union of

the States thereunder, and that they will in like manner abide by and faithfully support all laws and proclamations which have been made during the existing rebellion with reference to the emancipation of slaves. There is where he got the power. At all events, if there were any doubt about his having the power under the language of the Constitution itself, there is an authority given by Congress to him to say that if the men who had been engaged in the rebellion would take an oath to support the Constitution henceforth, and to support the proclamations emancipating slaves, they should have pardon. Sir, in addition to that oath he went further and put into the very pardons themselves which were granted to the individuals, terms and conditions there expressed.

Mr. SAULSBURY. Mr. President—

Mr. DOOLITTLE. I hope the Senator from Delaware will not interrupt me. I have been very much interrupted, and have had three or four speeches interjected into my speech now. It costs too much to print a speech with the speeches of others in it. Mr. Johnson, in his proclamation from which I have read, specified the exceptions, namely:

"The following classes of persons are excepted from the benefits of this proclamation: first, all who are or shall have been pretended civil or diplomatic officers or otherwise domestic or foreign agents of the pretended government; second, all who left judicial stations under the United States to aid the rebellion; third, all who shall have been military or naval officers of said pretended confederate government above the rank of colonel in the army or lieutenant in the navy; fourth, all who left seats in the Congress of the United States to aid the rebellion; fifth, all who resigned or tendered resignations of their commissions in the Army or Navy of the United States to evade duty in resisting the rebellion; sixth, all who have engaged in any way in treating otherwise than lawfully as prisoners of war persons found in the United States service as officers, soldier, seamen, or in other capacities; seventh, all persons who have been or are absentees from the United States for the purpose of aiding the rebellion; eighth, all military and naval officers in the rebel service who were educated by the Government in the Military Academy at West Point or the United States Naval Academy; ninth, all persons who held the pretended offices of Governors of States in insurrection against the United States; tenth, all persons who left their homes within the jurisdiction and protection of the United States, and passed beyond the Federal military lines into the pretended confederate States for the purpose of aiding the rebellion; eleventh, all persons who have been engaged in the destruction of the commerce of the United States upon the high seas, and all persons who have made raids into the United States from Canada, or been engaged in destroying the commerce of the United States upon the lakes and rivers that separate the British Provinces from the United States; twelfth, all persons who, at the time when they seek to obtain the benefits hereof by taking the oath herein prescribed, are in military, naval, or civil confinement or custody, or under bonds of the civil, military, or naval authorities or agents of the United States as prisoners of war, or persons detained for offenses of any kind, either before or after conviction; thirteenth, all persons who have voluntarily participated in said rebellion, and the estimated value of whose taxable property is over twenty thousand dollars; fourteenth, all persons who have taken the oath of amnesty as prescribed in the President's proclamation of December 8, A. D. 1863, or an oath of allegiance to the Government of the United States since the date of said proclamation and who have not thenceforward kept and maintained the same inviolate: Provided, That special application may be made to the President for pardon by any person belonging to the excepted classes; and such clemency will be liberally extended as may be consistent with the facts of the case and the peace and dignity of the United States."

These were the terms of amnesty and pardon which were proclaimed by the President, in pursuance of the express statute passed by the Congress of the United States. Now, sir, this amendment proposed to the Constitution embraces large numbers of persons to whom pardon and amnesty have already been given. I know it may be said that by an amendment of the Constitution of the United States, which is the supreme law of the land, you can annul all existing rights. You could, perhaps, by an amendment to the Constitution of the United States, enact a provision which would deprive individual citizens of their property, and vest the whole of it in the government of a State or in the Government of the United States; you might, perhaps, by a constitutional amendment, pass a bill of attainder by which certain men should be sentenced to death and to corruption of blood; but, sir, would it be right? That is the question.

Where men in good faith have taken this oath and accepted the terms of this amnesty and pardon, is it right to undertake, by a constitutional amendment, to rob them of this vested right? Sir, I have never been taught to believe that might was right, or that such a provision would be right because we had the power to pass it. I

maintain that good faith, the good faith of this Government which was pledged by the Congress of the United States, and the President acting under the authority of Congress, requires us not to undertake to destroy or take away the rights which we ourselves have vested. Our honor is involved in it, and we cannot, as honorable men, it seems to me, undertake to annul what we ourselves have given and they have accepted in good faith.

While upon this subject of pardons, as so much has been said from time to time of the numbers of pardons that have been granted, I beg leave to state from a paper which I hold in my hand, furnished to me, and which I believe to be correct, that there still remain unpardoned, liable to trial and to conviction and punishment among the chief leaders of the rebellion, one hundred and thirty major and brigadier generals, eighty-eight members of the confederate congress, so called, one hundred and fifty-eight ex-United States Army officers, and one hundred and twenty-two ex-United States Navy officers, who left our service to join the rebellion, and of the prominent rebel officials, like cabinet officers and governors of States, thirty-seven. In all five hundred and thirty-five of these principal officers remain unpardoned. They are in the hands of the law, liable to be tried, certainly all the civilians at least. As to major generals and brigadier generals who surrendered, the terms of the surrender may control the good faith of the United States on the question of their trial, conviction, and punishment.

Mr. President, to this amendment I object also because it assumes on the part of the Constitution of the United States to fix the qualifications of those officers who hold offices under the State governments. If it were confined to officers under the United States, to Senators and Representatives in Congress, and to all persons holding office under the Government of the United States, I could well see the propriety of the United States prescribing the qualifications of their own officers. But when you go beyond that and undertake by the Constitution of the United States to proscribe the qualifications of officers under the laws and constitutions of the States, it seems to me you are interfering with a question which belongs to the people of the States. In the States of Tennessee, Missouri, Maryland, and West Virginia the people have assumed to pass upon the question for themselves. They prescribe time qualifications of those who shall hold offices under their State governments. I think that is a matter which belongs to the people of the States.

I stated yesterday that in my judgment one of the great dangers to be apprehended from inserting this proposition as a part of the constitutional amendment to be submitted would be to prevent the adoption of the residue of the amendment, for I understand this proposition to be to submit all these sections together as one amendment, although there are five or six sections, the subjects-matter of which are entirely distinct. The proposition seems to be to submit them all together, so that if there is one section which three fourths of the States refuse to sanction, all will be lost. I think that certainly if this amendment is to be pressed in its present form each section should be submitted in so many distinct and independent articles so that if any article were adopted by three fourths of the States, that article could become a part of the Constitution. For instance, that article which forbids the assumption of the rebel debt and that article on the subject of the basis of representation might be adopted, when this, from the form in which it stands, would not be able to command the assent or ratification of three fourths of the States, and therefore all might be lost.

Now, Mr. President, I confess for one that if constitutional amendments are to be submitted I desire that they should be submitted in such a form that they will be adopted. I want this thing closed up, not kept open forever. If these amendments are submitted in such form as not to receive the sanction of three fourths of the States, where are we? Still in a state of *quasi* war. I think that this clause which is now proposed to be inserted in the amendment, instead of tending to reconstruction or restoration, has a tendency to obstruct the very thing at which all aim or should aim.

I am just as liable to be mistaken as any other person; but it is my deliberate opinion that if on the first day of this session we had admitted into both Houses of Congress those gentlemen who came here and who were prepared in good faith to take the oath which we require to be taken, we should this day be in a much better condition than we are now. I believe that if these men who could take the oath had been admitted, and those who could not take it had been sent home, the people of those States would have found men who would take the oath, there would have been Representatives from many, if not all, of the States, by this time, and we should have presented the spectacle of a united people, the United States, not the disunited States, not a condition of *quasi* war, a moral warfare, a condition in which we hear from one end of the session almost to the other continual denunciation and vituperation, and which does not tend to peace, does not tend to restoration or the harmony of the States.

I believe, sir, that these men would have been able in all these States to have built up a powerful party to support them if we had taken them by the hand, countenanced them, and given them the moral support of Congress and of the Government. But by our treating them as if they were like rebels themselves we discourage

them and discourage the men who stood with them. I have no doubt of another thing, that if this day the Representatives from all these States who could take the oath of allegiance were in Congress, speaking the voice of a united people to the civilized world, our bonds would stand at ten per cent higher than they do today. I have no doubt of another thing, that had all these States been represented by loyal men taking the oath of allegiance, joining with us heart and hand to speak the united voice of the American people, Maximilian would have left Mexico before now.

Sir, did you not read the speech of Roebuck in the British Parliament the other day, the man who from the beginning hoped for the dissolution of the Union, labored for it, denounced the English Government for not interfering to aid the South to dissolve the Union?

Mr. CONNESS. I believe, if the Senator will permit me to say it, that he uses the term, applied to our country, of "disunited States." I think he does.

Mr. DOOLITTLE. I say that is the position in which you place us and have endeavored to place us from the beginning and from before the beginning of this Congress, while I have struggled to place us in the position of the United States, speaking one voice, rallying under the same flag; and I repeat it here, without twenty-five stars on it, either. Our national salute is thirty-six guns, not twenty-five; our flag bears thirty-six stars, the representatives of thirty-six States of the Union, not twenty-five. And, sir, placed in that position, how much better should we stand before the nations of the earth. Roebuck would not rise in Parliament to say, "Wait a little longer; the war is not yet over; the States are still separated; they are denouncing each other; there is danger of a new civil war breaking out."

Mr. President, I say, as I said before, that I claim no more weight for my opinion than belongs to any other person; but this is the light in which I look upon the situation. This

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is the danger which is impending over us now, that we are endeavoring to put into this constitutional amendment that which, instead of tending to peace, tends to obstruction, tends not to restore but to keep separated.

I had no intention of detaining the Senate at so much length; but I wish to move an amendment to this proposition. After the words "shall have" and before the words "engaged in insurrection or rebellion," in line thirty-seven, I move to insert the word "voluntarily." I shall also propose in the same section, after the word "thereof" and before the word "but," in line thirty-nine, to insert "excepting those who have duly received pardon and amnesty under the Constitution and laws, and will take such oath as shall be required by law." My first amendment is to insert the word "voluntarily," and on that I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. DAVIS. Mr. President, I do not propose to debate at this time the subject of the proposed amendment to the Constitution of the United States; but I will make a single remark in support of the view taken by the honorable Senator from Wisconsin in relation to his proposition to exempt from the effect of the amendment now pending all the persons who were forced involuntarily into the confederate service. I am somewhat surprised that a proposition so just, so humane, and so politic as that should not receive the unanimous sanction of the Senate. We all know that coercion and a power of compulsion to do a criminal act, which cannot be resisted by the party who is guilty of the act, exempts from culpability and punishment. If that be a true principle in relation to crimes that strike at the peace and welfare of society, and which crimes are supposed, and in fact do generally, import a high degree of moral turpitude, how much more forcibly ought such a principle to be applicable to this proposed amendment to the Constitution. We know, as a matter of public history, that in some of the confederate States there was a universal conscription of every man who could carry a gun. In one of those States, at least, it swept through all classes, from boys of sixteen to men of sixty years of age. These men were not allowed to choose whether or not they would enter into the camp and into the army of the rebellion. The whole country was hunted over to find every man who was capable of bearing arms, and, without regard to his own judgment or his own disposition to enter into the rebellion or to keep out of it, he was forced by a resistless power to become a conscript in the rebel army. There were feeble old men and immature boys who were in great numbers thus forced into the army of the confederate States. Is there anything of justice, much less of policy and statesmanship, that requires that all those soldiers of the rebel army should be inexorably punished? Notwithstanding the position assumed by the Senator from Illinois, that a disqualification for office is no punishment, I maintain that it is a punishment, and a grievous punishment, and such as a great and generous nation, or the representatives of a great and magnanimous people ought not to impose upon such a number of persons. I suppose that if the honorable Senator from Illinois himself was to come in a class, in the form of an amendment to the Constitution, that would

exclude him during his lifetime from office, he would regard it as some punishment. It is punishment, and punishment of the most grievous and dishonoring character, for a man to be excluded from taking part in the Government of his country by filling such an office as those authorized to fill them might call him to the discharge of the duties of.

But, Mr. President, there is another idea connected with this subject that has been forced on my mind. We know from the public prints and the history of the rebellion that late in the war about one third of the armies of the rebels deserted and abandoned their camps and their banner. That was an enormous desertion, and it could only have resulted from the fact that the greater proportion of them were forced into the service and were required to fight for a cause against which they were opposed in principle and sentiment and if left to their own free will would never have entered. This proscriptive amendment is to operate inexorably upon those who willed to go into the confederate service as well as those who were involuntarily, and by a force which was resistless by them, compelled to go into it. It embraces and proscribes during their lifetime those who were involuntarily forced into the service and who abandoned it and deserted it on the first opportunity, as well as those who went into it with a free and deliberate will, and continued in it to the end. In the language of the honorable Senator from Wisconsin, what will a civilized world think of the justice and humanity, much less of the policy, of such a proscription as this? If the object of its friends was to prevent perpetual reunion and a return by the rebel States to loyalty and to true fealty to this Government, it seems to me this would be one of the most effective measures that they could devise to produce such a state of things.

I rose, Mr. President, not to enter into this debate, which I expect to do at a later period of it, but simply to urge this single consideration in support of the humane and just and statesmanlike proposition that the honorable Senator from Wisconsin has offered as an amendment to this section of the proposed amendment to the Constitution.

Mr. WILLEY. Mr. President, it is a matter of indifference to me whether the amendment proposed by the honorable Senator from Wisconsin be adopted or not. My impression is that if it should be incorporated into the proposed constitutional amendment it will emasculate it pretty effectually, and that the practical result will be that you will find in the end very few individuals who ever entered into the rebellion voluntarily. A few of the more prominent, of course, could not escape; but it would be almost impossible to prove in the southern States, where there would be a general disposition to evade the fact, that any person who has not been very prominently engaged in the rebellion had ever entered into it voluntarily. Indeed, if I understand the argument or affidavit of Mr. Stephens, made before the committee of fifteen, I take it that his plea is that he never entered into the rebellion voluntarily.

But, sir, I did not rise so much to say anything upon the amendment offered by the Senator from Wisconsin as to reply to the argument of the Senator from Kentucky, which is but a reiteration of the argument of the Senator from Pennsylvania [Mr. Cowan] the other day, and of the repeated arguments of the Senator from Wisconsin, [Mr. Doolittle] that this amendment is vindictive in its character; that it is *ex post facto* in its nature; that it is designed as a punishment for the crime of treason. I utterly deny that such is the philosophy of the amendment, or that such can be said properly to be the intention of the amendment. It may, in its results, operate as a punishment, as an odium, as a disgrace upon the parties to whom it shall apply; but, sir, what is the purpose of this amendment? I will state what I understand to be its purpose. It is not to punish the men who engaged in the rebellion for the crime which they have committed; the law in that respect is ample now; but, not being penal in its character, it is precautionary. It looks not to the past, but it has reference, as I understand it, wholly to the future. It is a measure of self-defense. It is designed to prevent a repetition of treason by these men, and being a permanent provision of the Constitution, it is intended to operate as a preventive of treason hereafter by holding out to the people of the United States that such will be the penalty of the offense if they dare to commit it. It is therefore not a measure of punishment, but a measure of self-defense; and the honorable Senator from Wisconsin was, in point of fact, driven to that conclusion at last by the interrogatory propounded to him by his colleague; and then he asked, in consideration of the amnesty proclaimed by Mr. Johnson and of the legislation of Congress on that subject, would it be just, would it be right to incorporate such a provision as this in the Constitution of the United States, excluding these men hereafter forever from holding office?

Now, sir, is it right? The duty of the Government and the citizen is reciprocal; the obligation is mutual. The Government owes to its citizen protection; the citizen owes to the Government obedience and support; and I demand to know of the Senator from Wisconsin, or any other Senator, whether there is in the annals of history the case of a Government so benign as has been that of the United States, and where the obligation on the part of the Government has been so perfectly performed and so adequately extended? Do Senators pretend to say that the

men disqualified by the proposed amendment rebelled because they had any just cause to rebel, any just cause of complaint on the part of the Government; that it had failed to afford them the protection that was due from the Government to them? Do Senators pretend to say that there was the shadow of a pretext to justify these men in going into the rebellion?

Then, sir, if they cannot answer these interrogatories in the affirmative, as I know they cannot, and will not dare to do so, how does the case stand? Here was the Federal Government extending to these men ample protection. What did they do? Yield to the Government the support that was due from them to the Government? No, sir; not only did they withhold support from the Government, but they drew the sword to destroy it. And now, sir, the proposition is, shall these men, who have thus forfeited their allegiance and shown how unfaithful they could be to the most benign Government in the world, be allowed again to become the depositories of the political power of the United States, the custodians and executors of our laws and liberties? Would there be any justice or any propriety in allowing men to be again introduced into the Government who have, under such circumstances as these, shown themselves to be so faithless to their trust? That is the question; and looking to the future peace and security of this country, I ask whether it would be just or right to allow men who have thus proven themselves faithless to be again intrusted with the political power of the State. I think not; and upon that ground I think this exclusion is wise, is just, is charitable, and is Christian, and that we would be faithless to our trust if we allowed the interests of the country and its future peace and welfare to be again disturbed by men who have shown themselves thus faithless in the past. And, sir, it does seem to me that there is a degree of presumption in men who have hardly yet washed their hands of the blood of our fellow-citizens that they have shed in their insane efforts to destroy this Government, coming here and clamoring at the door of Congress again for the very political power which they have hitherto used for the destruction of this Government.

You may say they will do us no harm by being again allowed to hold office. How was it in the origin of our troubles? How was it when these men were in office before the rebellion commenced? How did they use the power that was intrusted to them? I answer, by sending our vessels away from our shores; by transferring our arms from the North to the South and by depleting the Treasury of the United States by preconcerted arrangements, so that when the rebellion should be precipitated upon the country the power of the Federal Government would be crippled and to a great extent destroyed. Shall we again trust men of this character, who, while acting under the obligation of the oath to support the Constitution of the United States, thus betrayed their country and betrayed their trust?

I hope, sir, that we shall bear no more outcry about the injustice, the inhumanity, and the want of Christian spirit in thus incorporating into our Constitution precautionary measures that will forever prohibit these unfaithful men from again having any part in the Government. They have no moral right to it; they have forfeited it by their past conduct. If, hereafter, they shall show works meet for repentance, and that they are to be relied upon, this provision contains within it the means by which the disability may be removed, and they may be again allowed to participate in the political administration of the Government.

Mr. DAVIS. I will say a word in notice of the remarks of the honorable Senator from West Virginia. He and myself and the honorable Senator who now occupies the chair [Mr. Mums] are lawyers. We have read of the atrocious penal code of England, and the number of crimes that are punishable there by death and by transportation. We have read also of some of the benignant principles of law that characterize the administration of the penal code of England; and among those principles is this: it is better, says the law, that ninety-nine guilty men shall escape punishment than that one innocent man shall be punished. But the honorable Senator, in the benignity of his nature, reverses the humane spirit of that maxim of the law, and lest some men, under the pretext of having been involuntarily forced into the military service of the rebellion, should escape, he is anxious to have them all punished, guilty and innocent. That is about the spirit of his remarks. In the administration of this penal code of England, as it has been transferred to the United States and to all the States of America, what is the instruction rendered, I suppose by yourself, sir, if you ever presided in a criminal court, and certainly by every judge in America who has presided in a criminal court?

"If, upon a review of the whole case, you have reasonable doubt of the guilt of the accused it is your duty to give the accused the benefit of that doubt, and to acquit."

Mr. WILLEY. The honorable Senator will allow me to say that he totally misinterprets my remarks. The point of my remarks was to show that the guilt or innocence of the party was not the matter at issue; that we were not trying them for their crimes, but we were providing security for the future peace of the country.

Mr. DAVIS. The honorable Senator is an American citizen; he is a patriot; he is a Senator; and in addition to that he is a professor of the Christian religion, a follower of the lowly and humble Redeemer, whose death was given to expiate the sins of a fallen and a wicked world. What is the spirit that is taught to him by his Great Teacher? You say forgive your enemies; you say turn your other cheek to the man who smites you. You are taught benevolence and philanthropy and forgiveness by the precepts of the religion which the honorable Senator professes and of which, I have no doubt, he is a very exemplary member; but it seems to me that he forgot all the spirit of his Christian charity and faith in the tenor of the remarks which he made.

The honorable Senator stated another principle to which I fully subscribe. It was this: that the duty of protection by the Government and the duty of obedience to the Government are mutual. It is the duty of the citizen to obey the law; and it is the duty of the Government to protect the citizen and to enable him to perform his obligation to obey the law. Now, sir, what has been the condition and what was the condition of things at, the commencement of this rebellion? In the State of Tennessee there were two issues before the people submitted to the aggregate vote of the State. The one was whether the State would call a convention even to consider the subject of secession, and the other was whether the State would secede. On the first issue there were nearly fifteen thousand votes of a majority of the people of the State of Tennessee against the calling of a convention; and upon the question of secession there was a majority of upward of fifty-six thousand votes in that State against it. How was it in the State of Virginia, the Senator's own State? There was a large majority of the people of Virginia against secession, and that majority was demonstrated by an actual vote at the polls of the people. Now, apply the principle of the honorable Senator. Here was a majority of fifty-six thousand people in the State of Tennessee, and a majority of from twelve to fifteen thousand loyal people in his own State. They expressed opposition to secession at the polls. What was the duty and the obligation of the Government, according to the honorable Senator's own maxim and according to the universal maxim of justice and humanity as between governors and governed? These people were anxious to adhere to the Union, to perform their duties loyally as citizens. They expressed that disposition and purpose in the most solemn manner, and in the State of Tennessee by an overwhelming vote; According to the honorable Senator's maxim — a principle to which I yield my hearty assent, and to which no just and humane man can offer a dissent — the Government of the United States ought to have upheld, supported, and protected this fifty-six thousand majority in the State of Tennessee in their wish and purpose to adhere to the Union; and so of the Senator's own State. Did the Government of the Union perform its obligation to the people?

The Senator asks triumphantly, was there ever a Government in the world, since the commencement of time, that so perfectly and fully discharged all its obligations to these people who went into the rebellion? Sir, I say that at that great crisis, at the time when the question of loyalty and disloyalty was to be effectively and finally decided, the Government was in flagrant default. It was not in the act of protecting the majorities in those States and the people in the other southern States who were opposed to secession in their position of fidelity to the Government. None of the honorable Senator's zeal, none of his eloquence, none of his vehemence of declamation against these rebels can shake the truth of that position. The true and loyal men who constituted large majorities in many of the southern States were abandoned, or if they were not abandoned, they were left wholly without defense and protection by the Government that he wants now to oppress them. Sir, I tell the honorable Senator, and it is the truth of the case, that before the Government of the United States can hold these men rigorously to the charge of treason, to the consequences of treason and rebellion, to its forfeitures, its punishments, and disabilities, he and those who favor such a policy ought to be prepared to demonstrate beyond question that the Government performed its duty fully and effectively toward these people. That cannot be done. It was not the fact.

Then, I assume, upon the gentleman's own principle and the fair deductions from it, that every man who was willing to remain faithful to the Government of the United States, provided he had received such protection and support from the Government as would have enabled him to maintain that position, ought to come under the benefit of the reservation, the exception of the honorable Senator from Wisconsin. If there is any doubt in discriminating the guilty from the innocent, those who ought to receive the immunity from those who ought not to receive it, I, to save the innocent, would give it indefinitely to all, just as the benignant principle of the common law of England declares that if there is a doubt, the accused shall receive the benefit of the doubt, and that it is better for ninety-nine guilty men to escape than that one innocent man should be punished.

But, Mr. President, I do not intend at this time to enter into a discussion on this subject. I shall avail myself of the right which the honorable Senator from Wisconsin said he would.

At a future time, in the progress of this debate, it is my purpose to enter into it, and to enter into it with more fullness and detail of principle and of fact than I have attempted upon the present occasion.

Mr. SAULSBURY. It is not my intention now to enter into the discussion of the details of this proposition. I intend to do so before the debate closes. The immediate question before the Senate, as I understand, is to insert after the words "shall have," in the thirty-seventh line of this third section, the word "voluntarily;" so that it will read:

That no person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the Government of the United States, or under any State, who having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State to support the Constitution of the United States, shall have voluntarily engaged in insurrection or rebellion against the same, &c.

The proposition is to insert the word "voluntarily." It is objected to, I understand. Upon what ground? I should like some gentleman to answer the question, upon what ground do Senators object to the insertion of the word "voluntarily?" If am compelled to do a thing against my will, if I cannot avoid it, shall my involuntary service be imputed to me as a crime? Sir, has not the spirit of vengeance gone far enough? Are you not satisfied with visiting punishments upon voluntary acts, but will you also visit them upon involuntary and unwilling acts? I read in the newspapers that we live in the nineteenth century, the Christian age, illuminated from the great East; that we receive our instructions in religion, morals, trade, and everything else from New England and yet one of these modern doctrines and modern teachings is this, that involuntary acts are to be punished! That is the direct proposition before the American Senate; and when an amendment is seriously offered providing that men who have been constrained by force to enter into what you call the "rebel" service, shall be exempted from criminality, a star arises in the East, though it may not be over the plains of Bethlehem, and though it may not be heralded by the angelic voices which sang "peace on earth, and good-will to men," proclaiming, "Though you may have been constrained and forced to enter that service, yet you shall be punished." That is the enlightenment of the nineteenth century! That is Christian sentiment as expounded by New England!

Mr. President, I am surprised at my friend from West Virginia. No man has a greater respect for him personally, and for his character as a Christian gentleman, than myself. I have heard him upon the platform inculcating the precepts of the Christian religion. I profess, myself, nothing of the kind. I only wish I possessed it. But he advocates, as I understand, not only that a voluntary criminal act shall be punished, but that an act done involuntarily, against the will — that is the meaning of it — by compulsion and per force, shall be visited criminally.

Mr. WILLEY. No, sir; the Senator is mistaken.

Mr. SAULSBURY. Explain the word "voluntarily" then, which is the word it is proposed to insert.

Mr. WILLEY. Does the Senator ask me to explain it, or will he allow me to explain it?

Mr. SAULSBURY. Certainly.

Mr. WILLEY. I wish to state, Mr. President, most distinctly, that I exclude the idea of punishment utterly from this amendment. It is not the philosophy of the amendment; it is not the principle upon which it is founded. I am not discussing the matter whether it is criminal or not. I only say that this is a precautionary, not a penal measure, looking to the future, not to the past; but that in looking to the future, and in providing for it, it is very right and proper to look to the past, to see whether we may trust men in the future who have been faithless in the past.

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THE CONGRESSIONAL GLOBE

May 31,

Mr. SAULSBURY. Before I proceed to reply to the remarks of the honorable Senator I will state that I was surprised yesterday to hear the honorable chairman of the Judiciary Committee say, in the discussion of this question, that this section was not one which inflicted pains and penalties. He said that no case could be found, that no authority could be cited for that position. I did not interrupt him at the time, but I will say now, before I proceed to reply to the honorable Senator from West Virginia, that if the honorable Senator from Illinois, who is chairman of the Judiciary Committee, had looked into the case *ex parte* Dorsey, reported in 7 Peters's Alabama Reports, he would have found the whole doctrine explained. It was a case into which I had occasion to look many years ago. He there would have seen this whole doctrine of what pains and penalties are in a legislative act, or in a constitutional prohibition.

Without arguing that question I come back to my friend from West Virginia. He has not answered what I said. He only says that he means something in the future; he does not mean anything that has transpired. Now, sir, what does this provision mean? Does it not mean, is it not intended to apply, to that which has transpired? Are you

going, and is that the object of your legislation, to provide for some contingency in the future? Is it not apparent to everybody, does not everybody know that this is not a measure to have an operation *in futuro*, but it is a measure to have an operation *in præsenti*, to apply to existing cases?

Then, sir, I return to my original suggestion, and I call upon my honorable friend from West Virginia, or anybody else, to assign a reason why it is that when a man is compelled to do an act, when he has no freedom of choice, he shall be punished for doing it. The proposed amendment only exempts from the consequences of this section those who have involuntarily done these acts. And yet, sir, we here in the year 1866, which has been illuminated by the fulminations which have come up from New England and the northern pulpits, the enlightenment which has been spread all over this continent, that an involuntary act, an act done against the will, contrary to the choice of the individual, is to be visited with highly penal consequences. That is your Christianity; that is your morality; that is your civilization; and on the floor of the Senate of the United States gentlemen who are known in the Christian world as rostrum monitors in behalf of what are called Christian principles, are found advocating such a doctrine. I say these things in no disrespect to the honorable Senator from West Virginia. He knows that. But, sir, the spirit, the animus of the proposition, is only the spirit, the animus that characterizes the entire legislation of Congress at the present time.

Six years ago we were a happy, united people. No people on the face of the earth in so short a time had ever so rapidly increased in numbers and grown in power. From thirteen feeble colonies we had grown to be thirty-odd great States. Our flag floated from ocean to ocean and from Lake to Gulf. Upon every mountain-top that flag was planted, and in every valley anthems of praise to this glorious Union were sung. The burdens of Government were unfelt by the humblest and by the highest citizen. We were at peace among ourselves and at peace with all the world. In those days there were some exceptions. In certain quarters of the country the Sabbath was desecrated and the pulpit dishonored by talking of grievances which nobody experienced. A remedy was sought, and the great Republican party was brought into existence to remedy those evils. It came into existence. From 1787 till 1860 we had advanced as no nation, as the history of the world will show, ever did advance. We were happy, prosperous, and free. The party to which my honorable friend from West Virginia now attaches himself, and to which in former years I believe he did not belong, was to remove some imagined evils. It came forward and triumphed, and what have been the fruits of its triumph? A dissevered Union; a war lasting for four long years; a public debt of \$4,000,000,000; every household draped in mourning; and every eye bathed in tears. That is the consolation that they have brought to us; that is the remedy they have afforded us. And yet, sir, in the pride of power and in the audacity of supposed superiority, they turn upon us, who have faithfully and consistently stood by the union of these States, and we hear, hissing from their voice, as the words issued from the mouth of the serpent that uncoiled itself among the flowers of Eden, "copperhead," "rebel sympathizer."

Mr. President, I have said more than I intended to say; but before this constitutional amendment is finally disposed of I propose to discuss certain questions here. I know what will be said about it in certain presses of the country. I never read one of them under any circumstances, and do not care what they say; but I know they will apply these epithets to me. But, sir, before this joint resolution is finally disposed of I propose to discuss certain questions. I will state the questions that I propose to discuss, and gentlemen who take exception to them may as well look up their authorities. I say that whenever a government *de facto* is established, although there may be a government *de jure*, every person yielding obedience to the government *de facto* is excused, not to be punished for it; he is no traitor, and he is not liable to be hanged nor quartered. That is one question. I propose to discuss another question, without stating my opinion now with reference to it: whether any man in what was called the confederate States who acted under the authority and by compulsion of that government, can be visited with punishment. My opinion of it may be inferred from the statement of the proposition; and let me say to my friends on the other side that if they propose to combat these principles, they had better be prepared with the authorities. The principle I have just mentioned is not only founded in law, but it is founded in the teachings of the fathers.

Why, sir, you are drawing a great bill of indictment in this proposition against a whole community, indicting them all as criminals, rebels, and traitors. The thing is abhorrent to the instincts of humanity. What, sir, indict a whole community, simply because there is an imaginary line between them, as guilty of treason; that they are all traitors, all criminals. The thing is impossible. How would you feel, sir, how should I feel, if a gentleman south of the Potomac, that we believed to be a gentleman, should come and extend to us his hand? Would we not take it? If we took it would we not take it as a gentleman? If we believed that he was a traitor, that the crime of treason was upon his soul, the greatest crime known to the law, would we take his hand? Would you, sir? No, you would spurn it, and so would every honest man.

I know that the sentiments that I entertain and the opinions I avow are unpopular; but what do I care about

that? The office of a man intrusted with public position is as much to make public opinion as to be governed by it. If he discharges his office correctly and honestly, though for the moment the discharge of that duty may be unpopular, it will not be long before the public voice will say that he is right. The great difficulty in this whole case has been that there has been a clamor in one section of the country against a subdued and fallen foe, and it is popular to cry out for blood and vengeance, and legislation is being shaped in conformity to that demand of an excited public opinion. I choose to say, for one, I heed not the clamor. Let it come with the whirlwind's power; let it come in the tornado's blast; let it come in the earthquake's shock; I stand unmoved amid the clamor for blood and vengeance. I heed it not. I will not listen to it. It is the voice of error; and it will not be long before the American people. North and South, will awaken and listen to the voice of reason. This cry for blood and vengeance cannot last forever. The eternal God, who sits above, whose essence is love, and whose chief attribute is mercy, says to all His creatures, whether in the open daylight or in the silent hours of the night, "Be charitable; be merciful."

But, sir, let me make another remark in reference to this matter. It will be misinterpreted, I know. My motives will be misinterpreted. My position will be misinterpreted. No man will misinterpret it to my face. It is this: recollect that south of the Potomac upon which your amendment is to operate there is a country extensive enough for more even than one empire. It is inhabited by millions of people. They are men who have honestly engaged in resisting your authority, as you have honestly maintained your authority. By the force of arms you have overcome them. They have yielded to that power against which they could not contend. But, sir, there are hundreds and thousands and millions of women and children there who have had nothing to do in what you say was an unlawful resistance to your authority. You tax all those people. You do not allow them a voice upon this floor. They are unheard. They cannot say a word. They have no representation here. If the eternal God was to send an archangel from heaven to plead their cause I do not believe he would be heard in legislative halls. I say that with no disrespect to the Senate. I am only speaking with reference to the spirit of the times. Your legislation affects that great class of people. Taxation without representation is abhorrent to every American mind. The denial of representation caused your fathers in revolutionary times, feeble as they were, to appeal to the God of battles for the arbitrament of the contest. And yet, sir, with all their lessons before us; with the illustrious example of George Washington; with the example of the noble men who signed the Declaration of Independence, pledging their lives, their fortunes, and their sacred honor to maintain their declaration that taxation without representation was a principle to which no freeman could submit, you exclude from your halls of legislation eleven of the States of this Union, twenty-two Senators from this Chamber; and in their absence you propose to pass and to submit to them a constitutional amendment.

Mr. President, if they are not fit to be represented here, are they in any sense fit to have such a proposition submitted to them? They are either in the Union or out of the Union. If they are in the Union, the Constitution says that every State shall be represented by two Senators upon this floor. They have elected their Senators; they have presented themselves here; but you say they shall not be admitted; and yet in the face of your own act, and in violent inconsistency with your own act, you propose to submit to them a proposition to amend the Constitution of the United States. I ask you, sir, if they are not in a condition to be represented upon this floor, are they in a condition to have a proposition of this kind submitted to them?

The only proposition that I have seen in Congress — I will not refer to the proceedings of the other House — which is consistent with congressional action is the proposition of a gentleman from Pennsylvania, from the city of Lancaster, by the name of Thaddeus Stevens. He treats them as out of the Union, having no part or parcel in it, and he proposes to govern them as districts and sections of country subject to the authority of the United States, but not being part or parcel of it. While I think that proposition is perfectly untenable, yet viewing your legislation in the light in which I conceive it, I say he has interpreted the whole theory of the system. I have no respect for him as a legislator, and do not know him as a man.

Now, sir, is it possible that there are three men on the floor of this Senate who honestly believe that the people down South are all traitors? The law says that treason is the

highest crime that can be committed; but, sir, the instincts of your nature, acting responsively to the teachings of the law, tell you that those who have acted in obedience to a *de facto* government are not guilty of treason, and though it may be improper, though it may be imprudent — and I have been sometimes told by my friends that I do not always weigh my words — I now avow on the floor of the American Senate that you may arraign before a just court and an impartial jury as many of these southern gentlemen as you please who, after their States had seceded,

yielded obedience to the government *de facto* over them, and you never can convict them of having committed any crime. For twenty years I have studied the law, and I have studied it that length of time with but little effect if I am not certain in the conclusion to which I have arrived. At the same time I may say, to prevent misrepresentation, and it is well known that while I have been opposed to the acts of the past Administration, and to many of the present, I never sympathized with the movement of these southern gentlemen.

The time has gone by to apply to the Democratic party or myself the epithet of "sympathizer with the rebellion." I state my opinions as I honestly entertain them; and when legal questions are presented, and not only legal questions but questions underlying the very science of government itself, which have been discussed by such great luminaries as Burke in the British Parliament, and by all the able writers upon international and municipal law, I may avow a concurrence in their opinion without subjecting myself to remarks prejudicial, not to my loyalty — a word that I do not know the use of in a republican form of government — but prejudicial to my devotion to the Constitution and the Government of the country under which I was born and hope to die. I seek controversy with no man; I avoid none.

The PRESIDENT *pro tempore*. The Senator from Wisconsin asks that the question, when taken upon the amendment to the amendment, may be taken by yeas and nays.

The yeas and nays were ordered.

Mr. HOWARD. I wish to make a single observation.

Mr. JOHNSON. If the honorable member proposes to debate the question at any length I hope he will give way to a motion to adjourn.

Mr. HOWARD. I do not propose to debate it at any length.

Mr. FESSENDEN. We ought to have a short executive session.

Mr. HOWARD. I shall be through in a moment, and then I shall be entirely willing to take the vote on this amendment. Indeed, I will not say a word if there be a possibility of taking a vote now on the amendments offered by the Senator from Wisconsin.

Mr. FESSENDEN, and others. Let us vote on them now.

Mr. HOWARD. If no other gentleman wishes to address the Senate upon those two amendments, and the Senate is ready to take a vote upon them, I shall not occupy any time of the Senate by remarks.

Several SENATORS. Let us vote.

Mr. HOWARD. Very well.

The PRESIDENT *pro tempore*. Is the Senate ready for the question on the proposed amendment to the amendment?

Mr. HOWARD. Are both the amendments offered by the Senator from Wisconsin included in the motion?

The PRESIDENT *pro tempore*. But one question can be taken at a time.

Mr. JOHNSON. The question now is on the amendment proposing to insert the word "voluntarily." as I understand it.

The PRESIDENT *pro tempore*. That is the question.

The question being taken by yeas and nays, resulted — yeas 10, nays 30; as follows:

YEAS—Messrs. Buckalew, Cowan, Davis, Doolittle, Guthrie, Hendricks, Johnson, Norton, Riddle, and Saulsbury—10.

NAYS—Messrs. Anthony, Chandler, Clark, Conness, Cragin, Croswell, Edmunds, Fessenden, Foster, Harris, Henderson, Howard, Howe, Kirkwood, Lane of Indiana, Lane of Kansas, Morgan, Morrill, Nye, Poland, Pomerov, Ramsey, Sprague, Stewart, Sumner, Trumbull, Wade, Willey, Williams, and Wilson—30.

ABSENT—Messrs. Brown, Dixon, Grimes, McDougall, Nesmith, Sherman, Van Winkle, Wright, and Yates—9.

So the amendment to the amendment was rejected.

Mr. DOOLITTLE. I now move the other amendment of which I gave notice, to insert after the word "thereof" in the thirty-ninth line the words "excepting those who have duly received pardon and amnesty under the Constitution and laws, and will take such oath as shall be required by law," and on that I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. HENDRICKS. I wish to inquire of the Senator from Wisconsin, what is the meaning of the last clause of his amendment? Does it contemplate the enactment of a law in the future prescribing some new oath, or does it refer to the oath which has been already taken in pursuance of the proclamation of the President?

Mr. DOOLITTLE. Perhaps that provision of the amendment is not necessary to the idea, and I will omit that

portion of it and let it stand simply as a test of the question whether those who have received pardon and amnesty shall be excepted from the effect of this amendment or not.

Mr. HENDRICKS. I think that is in better shape.

Mr. KIRKWOOD. I should like to hear it read as modified.

The SECRETARY. The words proposed to be inserted are, "excepting those who have duly received pardon and amnesty under the Constitution and laws."

Mr. KIRKWOOD. I understand that will dispense with the taking of the test oath. Is that the Senator's intention?

Mr. DOOLITTLE. No, sir; not at all.

Mr. KIRKWOOD. The words requiring the taking of the test oath are stricken out.

Mr. DOOLITTLE. The test oath is still the law of the land. This has no effect on that law.

Mr. KIRKWOOD. This would override that if we adopt it.

Mr. DOOLITTLE. Not at all. This simply excepts from the provision of the section those who have received pardon and amnesty. I maintain that where we have granted under the Constitution and laws pardon and amnesty we have no right, though we have the power, to put them under the disability again.

Mr. HOWARD. One word. I desire to ask the Senator from Wisconsin whether the pardon and amnesty of which he speaks extend so far as to remove the disability created by the confiscation act of 1862 against the holding of office under the United States.

Mr. FESSENDEN. I desire to ask my friend from Michigan whether that would make any particle of difference. We all know that this proposition has no chance of succeeding in any shape.

Mr. HOWARD. Not the slightest; but the Senator from Wisconsin seems to make a point on that question.

Mr. FESSENDEN and others. Let us vote.

Mr. WILLEY. I wish to ask a question of the Senator from Wisconsin. Suppose there are pardons, as there are likely to be a good many, between the time this amendment shall be propounded by Congress and the time it may be adopted by the Legislatures; what will be its application to pardons granted between this time and that?

Mr. JOHNSON. It would apply.

Mr. KIRKWOOD. I should like to hear the amendment read as it was first offered.

The Secretary read the amendment as originally offered by Mr. Doolittle.

Mr. JOHNSON. Does the honorable member from Wisconsin propose to exclude all those who may after the adoption of the constitutional amendment receive pardon? That it seems to me would be the effect as it now stands. I move, therefore, to amend it by inserting the words "or shall receive."

The PRESIDENT *pro tempore*. The amendment of the Senator from Wisconsin is not amendable. The question is on the amendment of the Senator from Wisconsin to the amendment of the Senator from Michigan.

The question being taken by yeas and nays, resulted—yeas 10, nays 32; as follows:

YEAS—Messrs. Buckalew, Cowan, Davis, Doolittle, Guthrie, Hendricks, Johnson, Norton, Riddle, and Saulsbury—10.

NAYS—Messrs. Anthony, Chandler, Clark, Conness, Cragin, Creswell, Edmunds, Fessenden, Foster, Grimes, Harris, Henderson, Howard, Howe, Kirkwood, Lane of Indiana, Lane of Kansas, Morgan, Morrill, Nye, Poland, Pomeroy, Ramsey, Sprague, Stewart, Stunner, Trumbull, Van Winkle, Wade, Willey, Williams, and Wilson—32.

ABSENT—Messrs. Brown, Dixon, McDougall, Nesmith, Sherman, Wright, and Yates—7.

So the amendment to the amendment was rejected.

The question recurring upon the amendment of Mr. Johnson, the yeas and nays were taken, with the following result:

YEAS—Messrs. Anthony, Chandler, Clark Conness, Cronin, Creswell, Edmunds, Fessendon, Foster, Grimes, Harris, Henderson, Howard, Howe, Kirkwood, Lane of Indiana, Lane of Kansas, Morgan, Morrill, Nye, Poland, Pomeroy, Ramsey, Sprague, Stewart, Sumner, Trumbull, Van Winkle, Wade, Willey, Williams, and Wilson—32.

NAYS—Messrs. Buckalew, Cowan, Davis, Doolittle, Guthrie, Hendricks, Johnson, Norton, Riddle, and Saulsbury—10.

ABSENT—Messrs. Brown, Dixon, McDougall, Nesmith, Sherman, Wright, and Yates—7.

So the amendment was agreed to.

Mr. FESSENDEN. I suppose it is not intended to go further with this subject this evening. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and after some time spent in executive session, the doors were reopened, and the

Senate adjourned.

RECONSTRUCTION.

The Senate, as in Committee of the Whole, resumed the consideration of the joint resolution (H. R. No. 127) proposing an amendment to the Constitution of the United States, the pending question being on the amendment proposed by Mr. HOWARD, to insert the following after section three of the proposed article of constitutional amendment:

Sec. 4. The obligations of the United States, incurred in suppressing insurrection, or in defense of the union, or for payment of bounties or pensions incident thereto, shall remain inviolate.

Mr. HENDRICKS. Mr. President, nothing but a sense of imperative duty induces me to address the Senate upon this occasion. The Constitution is to be changed; the foundations of the Government are to be disturbed; some of the old oak timbers are to be removed, and timber of recent growth is to be substituted. Upon the foundations fixed by the fathers our institutions have rested firmly and securely for three quarters of a century. They have stood unmoved by the contests of ambitious leaders, the angry strife of parties, and the rolling waves of war. In peace and in war; in the turbulence of times of financial embarrassment, and the corruptions attendant upon the accumulation of great wealth; in every possible state and condition of our society, the Constitution has borne the test; and the fact now stands conceded that it established a system of government entirely adapted to our wants and condition as a people. This is proven beyond cavil and question by the prosperity and individual happiness that attended our growth, and the greatness and power to which we attained. The prosperity of the citizen, his security and happiness, and the might and grandeur of the nation attest the excellence of our form of government. The blessings of the past are our guarantee for the future if we but maintain our institutions as they are.

And now, sir, in this the most unsafe period of our history; when the passions excited by the war are yet fierce; when sectional controversies run high, and party strife is raging; when eleven States are absent from this Chamber, and other sections, seizing the opportunity, seek to aggrandize their power, and to fasten upon the country a partial and unequal policy; when the lust for power and gain carries men beyond the restraints of justice and right; at such a time I cannot remain wholly silent when I see the hand of the partisan and the self-constituted reformer laid upon the sacred work of the fathers. In such a case to speak is a man's duty, though none may heed. But, Mr. President, it is hard work to speak when one knows in advance that no argument, however just and forcible, and no appeal, however patriotic, can influence a single vote; that the authority and law of a political party is over every Senator of the majority; and that it remains now only to register the decree of the secret caucus.

At the meeting of Congress, but before the President had delivered his message, and before his views had been officially communicated, the Republican members, in caucus, determined to raise a committee of fifteen to "inquire into the condition of the States which formed the so-called confederate States of America and report whether they or any of them are entitled to be represented in either House of Congress." In most indecent haste the resolution passed both branches, and the committee became fastened upon Congress and the country. Because of its party origin, the work it had to do, and the secret character of its proceedings, that committee came to be known in the country as the "revolutionary tribunal," the "directory," and the "star chamber." Its first report was made some months since, in which it was proposed to reduce the representation of the southern States, but by the aid of the distinguished Senator from Massachusetts, [Mr. SUMNER,] who submits to party restraints upon his judgment with impatience, that measure was defeated. Its second report is now upon our desks. It passed the House, but when it came under discussion in the Senate, and had to bear the test of the independent judgment of Senators, it was found wanting, and its defeat became almost certain. A second defeat of a party programme could not be borne; its effect upon the fall elections would be disastrous. A caucus was called, and we witnessed the astounding spectacle of the withdrawal for the time, of a great legislative measure, touching the Constitution itself, from the Senate that it might be decided in the secret councils of a party. For three days the Senate Chamber was silent, but the discussions were transferred to another room of the Capitol, with closed doors and darkened windows, where party leaders might safely contend for a political and party policy.

When Senators returned to their seats I was curious to observe who had won and who lost in the party lottery. The dark brow of the Senator from New Hampshire [Mr. CLARK] was lighted with a gleam of pleasure. His proposed substitute for the third section was the marked feature of the measure. But upon the lofty brow of the Senator from Nevada [Mr. STEWART] there rested a cloud of disappointment and grief. His bantling, which he had named universal amnesty and universal suffrage, which he had so often dressed and undressed in the presence of the Senate, the darling offspring of his brain, was dead; it had died in the caucus; and it was left to the sad

Senator only to hope that it might not be his last. Upon the serene countenance of the Senator from Maine, the chairman of the fifteen, there rested the composure of the highest satisfaction; a plausible political platform had been devised, and there was yet hope for his party.

Mr. President. I recognize the propriety and necessity of conventions and caucuses to regulate all questions of organization and political policy; but I have never felt myself authorized to subordinate my judgment as a representative of the people to the decision of any body of men other than those I represent. To me it seems clear that each Senator owes it to the country to vote upon every important measure and every proposed modification thereof according to the dictates of his own judgment and conscience. The Constitution requires that two thirds of the Senators, each answering for himself, shall agree to a proposed amendment before it can be submitted to the States. In this weighty business now before us what are the facts? The House sent us four propositions to change the Constitution in one bill. Upon discussion it was found that probably no one of the propositions, nor any proposed modification thereof, could receive the required vote. Two thirds of the Senators, belonging to one political party, retired from the Senate to consider and agree upon a bill. Each Sen-

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ator, by going into the secret caucus, agreed and became bound to vote for whatever the majority of the caucus should adopt. A section or an entire bill may be adopted by a bare majority of the caucus, much less than one half the Senate, but the entire two thirds must vote for it in the Senate, not because it is right, but because the majority of the caucus has said so; and thus an amendment of the Constitution may be adopted by the Senate when a majority of the body would vote against it if no party obligation rested upon them. What Senator would dare propose to shut these doors against the people, that we in secret might take steps to change their great charter of liberty? The people would not endure it, but in congregating thousands would burst them open and demand to know all that was said and done upon a matter of such interest to them. The present proposed amendment has been decided upon in a conclave more secret than has ever been known in this country.

So carefully has the obligation of secrecy been observed that no outside Senators, not even the sharp-eyed men of the press, have been able to learn one word that was spoken, or one vote given. An Egyptian darkness covers the proceeding. The secret could not be more profound had the conclave assembled down in the deep and dark caverns of the earth. If you change the Constitution have the people not the right to know how and why it is done, what was proposed and said, and how each Senator voted? Is it not their business? Or indeed have they masters, party chieftains, who may say to them "We govern, you obey?" Is it not a fact that shall arrest attention that since this measure was reported from the caucus scarce an explanation has been conceded, and not one amendment offered or voted for by a single Senator who was in the caucus, so exacting and imperative is the obligation, and so literally is party authority obeyed. Sir, if the people can only come to know how this thing has been done. I believe they will refuse their indorsement.

I now propose a brief examination of the measure as it came from the caucus. It proposes an additional article of five sections, making that number of amendments or additions to the Constitution.

For the first section the virtue is claimed that it defines citizenship of the United States and of the States. I will read that part of the section:

All persons born in the United States, and subject to the Jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

What citizenship is, what are its rights and duties, its obligations and liabilities, are not defined or attempted to be defined; but these vexed questions are left as unsettled as during all the course of our history, when they have occupied the attention and taxed the learning of the departments of Government. But this is certain, that the section will add many millions to the class of persons who are citizens. We have been justly proud of the rank and title of our citizenship, for we understood it to belong to the inhabitants of the United States who were descended from the great races of people who inhabit the countries of Europe, and such emigrants from those countries as have been admitted under our laws. The rank and title conferred honor at home and secured kindness, respect, and safety everywhere abroad; but if this amendment be adopted we will then carry the title and enjoy its advantages in common with the negroes, the coolies, and the Indians. When the Senator from Wisconsin proposed an amendment excluding the savage Indians of the forest I believe every Senator who had been in the caucus voted against it. No one was authorized to change a word that the caucus had used, but I am not quite sure that the people of Minnesota will regard the obligation to a caucus as a sufficient reason why the Senator from that State [Mr. Ramsay] should seek to confer the rank, privileges, and immunities of citizenship upon the cruel savages who destroyed their peaceful settlements and massacred the people with circumstances of atrocity too horrible to

relate. How our citizenship will be esteemed at home and abroad should this amendment be adopted we may judge by consulting the sentiments with which we regard Mexican citizenship. We feel that it defines a mixed population, made up of races that ought not to mingle — whites, negroes, and Indians — of whom twenty thousand could not cope with four thousand soldiers of the United States of pure white blood on the field of Buena Vista. It was the work of many generations to place the name and fame of our citizenship so high that it ranked with the proudest titles on earth; but the mad fanaticism and partisan fury of a single year may so degrade it, as there shall be

"None so poor to do it reverence."

The second section now demands our attention. The intent and effect of that section is to take away representation in Congress in all the States in which the right of voting is not given to the negroes. The purpose is to constrain every State to confer the right of voting upon the negroes; and in case of refusal, the penalty is loss of representation. The section does not rest upon the proposition that those whom the States treat as unfit to vote shall not be represented, for it is so framed as to continue to the northern and eastern States their twenty Representatives that are based upon a non-voting population. It is so framed, also, as to continue to the States of Maryland, Tennessee, West Virginia, and Missouri their full representation, although during the war the military power was so used in those States as to place the political power in the hands of a few, who so exercised it as to exclude the residue of the people from the ballot-box. You say that If the States treat the negroes as unfit to vote, then they shall not be voted for; that no representation shall be allowed for them; then, I ask, if in some of the northern States the foreigner is denied a vote for five years, why shall he be voted for? If in Maryland, West Virginia, Tennessee, and Missouri the majority are treated as unfit to vote, why shall the minority vote for them and be represented for them? Come, now, let candor and truth have full sway, and answer me, is it not because you believe that the few in these States now allowed to vote will send radicals to Congress, and therefore you allow them to send full delegations that it may add to your political party power? And I now submit to your patriotism, to your love of our country, if we have not come upon most dangerous times, when our Constitution is to be torn up and remodeled that a political party may make its power more secure, that it may hold on to the offices, and shape and control sectional policies.

Mr. President, I now venture the prediction that this thing cannot succeed; that in this land of intelligence and love of liberty and right permanent power cannot be built upon inequality, injustice, and wrong. If the principle be right that none but voters ought to be represented, why do you not say so? If you think the negro ought to have the right of voting: if you are in favor of it, and intend it shall be given, why do you not in plain words confer it upon them? It is much fairer than to seek it by indirection, and the people will distinctly understand you when you propose such a change of the Constitution. I am not for it directly, nor will I coerce the States to its allowance. If conferred by the free action of the States, I am content. Within the limits of constitutional right and power I will support all measures necessary and proper for the protection and elevation of the colored race; measures safe and just to both races; but I do not believe that it is for the good of either race that they should be brought into close social and political relations. God has marked the peculiarities of each. He has put them asunder, and it is not the right, much less the duty, of man to join them together. Our institutions rest for their support upon the intelligence and virtue of the people, and who may say that the untaught negroes, so lately manumitted, are qualified to exercise the privileges and discharge the duties of an American citizen? Why then coerce the States to their enfranchisement?

Mr. President, it is my duty to call attention to the peculiar and involved form of expression adopted in this section. Instead of excluding from the enumeration the class to whom the elective franchise is denied, which would be easily understood, it is provided that "the basis of representation in such State shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens not less than twenty-one years of age in such State." Why the abandonment of that which is of plain meaning for that which is involved and difficult? This measure is to go to the people for their judgment, and should have been clothed in plain, honest language. As a party platform, it may serve a purpose that the meaning is covered; but as a part of the people's Constitution its obscurity is a vice. One needs to be a mathematician to be sure that he comprehends the full force of the proposition. But I will again venture the opinion that it means as if it read thus: no State shall be allowed a representation on a colored population unless the right of voting is given to the negroes — presenting to the States the alternative of loss of representation or the enfranchisement of the negroes, and their political equality. In Indiana there are many thousands of the colored race, the number having greatly increased during the past five years because the constitution and laws of the State have not been executed. The policy of the State has been to discourage their immigration, and that policy has been dictated by the desire to protect the white

labor. The presence of negroes in large numbers tends to degrade and cheapen labor, and the people have been unwilling that the white laborer shall be compelled to compete for employment with the negro. To confer the right of voting is to encourage their immigration into the State and to defeat what experience has shown to be a wise policy. Now, is that State to be denied a representation upon that population because she will not make the negro a voter, while New York continues to hold the four members in Congress to which she is entitled because of a white population to which she denies the right of voting? We could not with patience agree to that. The colored population of New England is so small that she is not perceptibly affected, whether she allows or disallows to them the elective franchise, but, in the agricultural regions of the West and South they are numbered by thousands and millions, and in many localities they are so numerous that to give them the elective franchise is to throw public affairs into their hands. That is impossible, and the adoption of this amendment is to strip agriculture of its proper voice and influence in Congress and in the election of the President and relatively to add to the already swollen power of New England. Were a blow aimed at the representation of Illinois would I not raise my arm to avert it? And why, sir? Because it is her right under the compact of the fathers, and also because the interests of Indiana and Illinois are identical; they are both agricultural States, and the members of Congress who guard and protect the rights and interests of either State cannot neglect those of the other. The same is true of all the agricultural States of the West, and the South. Discussing this question at an earlier day of the session, I had occasion to say:

"The States and country that rest upon the Ohio and Mississippi rivers and their tributaries have a common interest. They cannot cease to be agricultural States. The plow must turn wealth up to the men of the West."

"Shall we so permanently arrange the representation of the country that agriculture cannot hold up its head? Shall we so permanently adjust representation as that the spindle and the loom shall always be more productive and honorable than the plow and the harrow? Sir, I do not consent to it; and without any reference to sectional feelings and sentiments. I ask for the West simply equality in the legislation of Congress."

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"Now, Mr. President, if it is right to change the representation in the House of Representatives, that is, to disturb the foundations of the Government so as to readjust representation, and, as Senators claim, to make it equal and just, why is it not equally right to disturb the representation in the Senate? I know very well the reply will be that the Constitution itself forbids an amendment of that instrument in respect to representation in the Senate; But, sir, the power that made that provision can unmake it; the power to amend the Constitution can reach that very provision and change the representation in the Senate. I know it is said that representation in the Senate is one of the Federal features of the Government; but that argument has lost its force when we are taught in these latter times that State rights' are not to be respected, and that all power is now in the Federal Government. Suppose we undertake to make representation in the Senate equal, how would it stand? The six New England States, with a population of 3,135,253, have twelve Senators in this body, while the six great agricultural States of the West — Indiana, Ohio, Illinois, Iowa, Kentucky, and Missouri — have a population of 8,411,525, with a representation of twelve Senators. With nearly three times the population of New England, we have the same representation. If those States have this advantage in this body, is it fair to try to cutoff the representation of agriculture in the other end of this Capitol? While Indiana has a population of 1,350,428, Rhode Island — a glorious, gallant little State — has a population of 174,620. So far as representation in the Senate is concerned, one man in Rhode Island has a voice and power in the legislation of this country equal to eight men in Indiana. Taking the entire New England States, one man in New England has the voice and power in legislation in the Senate of nearly three men in the West. Is that right, is that just, when you are talking about equality of representation? I do not want to change that feature in our Government. I wish to stand by the State representation as our fathers established it. I do not want to take any of the political power from New England that our fathers agreed she might have. I will stand by their representation as firmly as they will, but I do not like that they shall ask to reduce the representation of the West and Southwest."

Mr. President, I am aware of the plausible argument that by the results of the war the slaves have been made free, and as the Constitution now stands will all be counted, and thus by the rebellion the representation of the South, so far as it rests upon the colored population, will be increased two fifths. Perhaps a sufficient answer is found in the fact that the slaves were not made free by the voice of the South, but by the constitutional

amendment which was demanded by the North; and that the North cannot well complain of a consequence of her own act. But, sir, in any view, is this a sufficient reason why we should not only deny to the southern States the increased representation caused by the freedom of the slaves, but also take from them the three fifths representation which they have always enjoyed under the Constitution? But, sir, if you will amend the Constitution at this most unfortunate time, and while the States most to be affected are unrepresented, I will meet you upon a ground you cannot question, and will propose that the southern States shall have no increase of representation by reason of the freedom of the slaves; and to that end I offer the following amendment, so that the section shall read:

Representatives shall be apportioned among the several States which may be included within the Union according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed, and excluding, also, two fifths of such persons as have been discharged from involuntary service by any proclamation of the President of the United States or by the amendment of the Constitution of the United States since the year 1861, and to whom the elective franchise may be denied.

If, now, the objection is made in good faith that the evil you would avoid is the increase of southern representation by the freedom of the slaves, then this amendment is agreeable to you and will be accepted. But it will not be accepted if the purpose really is to reduce the representation of the agricultural sections and thus relatively increase the power of the manufacturing interests, and perpetuate a policy that enriches the capital of one section and bears heavily upon the capital and labor of another. For five years no opportunity has been lost to build up the interests of the eastern States. With that end in view tariff and internal tax laws and drafts have been adjusted, and banking capital distributed; so that now almost every investment of capital in that section yields from fifteen to one hundred per cent profit, while in Indiana and Illinois the bushel of corn that ought to be worth to the farmer fifty cents, being manufactured into whisky is taxed eight dollars; the bushel yielding four gallons. Mr. President, I rejoice in the prosperity of any section when it is the result of legitimate trade, under equal laws, for then it is the prosperity of the whole country; but I call upon western Senators to hesitate before they surrender a representation that is a reliable support to our great interest, agriculture.

The third section provides that no person shall ever hold any office under the United States, or under any State, who, having at any time taken the oath prescribed by the Constitution as an officer of the United States or of any State, shall engage in rebellion or give aid and comfort to the public enemies. The proposition to exempt from the operations of the section those who against their will were compelled to participate in the rebellion, was voted down; and the section now stands excluding from all offices every person of the described class who either voluntarily or involuntarily became connected with the rebellion; and that, too, notwithstanding the party may be under the shield of the President's pardon. This harsh and sweeping measure will include many excellent men whose services now in the work of reconciliation would be of the greatest value to the country — men who displayed heroic courage in standing out against the secession movement, but who afterward yielded obedience to and served the established government *de facto*. This measure is in the spirit that pursued the supporters of Cromwell and the Parliament after the Restoration. It is in the spirit of vengeance after men are beaten and have surrendered, and cannot bring a blessing to our country. Senators say that the measure is not penal in its character. Why not? When pardoned are not these men eligible to State and Federal offices? And do you not propose to strip them of their eligibility because of their crime? I suppose the Senator from Illinois [Mr. TRUMBULL] by referring to the criminal code of his own State will find it prescribed as a punishment for crime that parties shall be “disfranchised and rendered incapable of holding any office of trust or profit.” That is as much a punishment as the fine or the imprisonment, and is found in the criminal codes of many of the States. It is a penalty when the court and jury strip the accused of his right to hold office. What is it, then, when done by Congress?

The Senator from West Virginia [Mr. WILLEY] says that it is a measure of safety for the future — a precaution. So the judge tells the convicted criminal the law esteems him unfit to hold office, and as a precaution the right is taken from him. As a penalty for crime this measure is *ex post facto*; and if it were a measure of ordinary legislation would therefore be unconstitutional. Mr. President, do you think there will enough good come of this to justify us in departing from the principle which is found in the Constitution of the United States and of every State in the Union, that a man shall be punished only according to the law in force at the time the act is done?

The fourth section provides that the public debt shall remain inviolate. Who has asked us to change the Constitution for the benefit of the bond-holders? Are they so much more meritorious than all other classes that they must be specially provided for in the Constitution? Or, indeed, do we distrust ourselves, and fear that we will all become repudiators? A provision like this, I should think, would excite distrust, and cast a shade on public

credit. But perhaps the real purpose is so to hedge in the bond-holders by constitutional provision as that they never may be taxed; that Congress can never assent to their taxation, and so that three billions of capital may bear no portion of the public burdens. Such would be the effect of this amendment. Who has attacked public credit, or questions the obligation to pay the public debt? Are the bond-holders not receiving their interest, even in advance, and in gold? Why then do they ask this extraordinary guarantee? They trusted the good faith of the people, and there is no breach of that faith. When things entirely unusual are asked, it is well for the people to inquire, why it is, what is the purpose, and how far will it carry us? The provision about bounties and pensions is but a blind. The man who wrote the section knew that pensions and bounties used no guarantee; that their payment is secured not only by law, but there is also the pledge of the honor and the hearts of the people.

Mr. President, I stand by the public credit, which is public honor and individual safety. But, sir, how shall we uphold our credit and secure our creditors? By just laws, by equal taxation, by distributing equally over the entire nation the burdens of Government, that they may rest upon the shoulders of all sections and interests. Then there will be no discontent, no grumbling, but a satisfied people, in their strength, will carry every obligation of the Government until discharged, and public credit will then be as firm as the solid foundations of this Capitol.

The fifth section declares the debts contracted in aid of the rebellion illegal, and prohibits their payment. Mr. President, who is so stupid as to have supposed these debts legal, or that they had any valid existence for one hour after the *de facto* government of the confederate States ceased to exist? Who is so silly as to fear their payment? It was amusing to observe that the Senator from Michigan, [Mr. HOWARD] in making an argument for this section, showed that it was wholly unnecessary, for he read one of the confederate notes, and upon its face it appeared that it was not to become due and payable until six months after the independence of the confederate States should be recognized by the United States. Will that note now in the Senator's pocket ever become due? The Senator laughed at the suggestion. The debtor has ceased to exist; the debt, according to its own provisions, can never become due, and each of the southern States has by constitutional provision repudiated it and prohibited the payment of any portion thereof. If there ever was a defunct and buried debt, without legal or moral force, the recognition and payment of which is in every way impossible, it is the debt, the continued existence of which it is now proposed to recognize by a prohibition of payment in the Constitution. The least that may be said of this section is that it would be harmless, but I would regret to see the face of the Constitution marred by a provision so unnecessary and trifling.

The sixth and last section provides that Congress shall have power to enforce, by appropriate legislation, the provisions of the article. When these words were used in the amendment abolishing slavery they were thought to be harmless, but during this session there has been claimed for them such force and scope of meaning as that Congress might invade the jurisdiction of the States, rob them of their reserved rights, and crown the Federal Government with absolute and despotic power. As construed this provision is most dangerous. Without it the Constitution possesses the vitality and vigor for its own enforcement through the appropriate departments.

Mr. President, I have now briefly examined the provisions of this article, and cannot resist the conviction that some of them are useless, while others are vicious and dangerous. Nor can I resist the conviction that this measure is pressed, not because of an exigency in our affairs, but to carry out a party programme. The President has his policy. You oppose him. You charge him with usurpation, while at the same time you are straining every brace and timber in the Constitution to secure to yourselves absolute control; indeed, you reach out beyond the Constitution, and by amendment — a proceeding to be resorted to only upon rare and solemn occasions — you grasp after and, with the avidity of hunger, clutch power. Why this reaching after power on your part? Is it not enough that for five years you have held all the offices of the country, and through the favoritism of the Departments

your partisans and followers have grown rich and powerful? Or is it so sweet to govern men that the possession of power is indispensable to your happiness? Upon what fact may you charge the President with usurpation? When he came into office he found eleven great States and eight million people under his absolute sway and government. His authority was as absolute and supreme as is that of the Czar of Russia over his extended dominions. The persons and property of the people were under his control. In his hands there seemed to be the issues of life and death. Did he like you clutch this power and seek to extend it? Did he say it is sweet to govern. No, Senators; laying down absolute power, he said to the people, "Place your States again in practical relations with the United States, and govern yourselves; I will be the President, exercising only those powers with which the Constitution has clothed me." I submit to the candid judgment of men if this was not an exhibition of sublime

and heroic devotion to principle and renunciation of power? And when you handed him the Freedmen's Bureau bill, and authorized him to appoint an army of office-holders to fill the whole country with his partisans, when you offered to give him a patronage such as no man had ever before held, he refused it all; but in accordance with his convictions of duty vetoed the bill. Twice he refused the crown of power, not, like Caesar, pushing it gently from him with the back of his hand, but firmly and in the face of most formidable opposition. The position of the President and those who support his Administration upon the great question now agitating the country is so well and accurately expressed by an eloquent friend, that I will borrow his words:

"1. That no State has the legal right to sever its connection with the Federal Government.

"2. Failing in such an attempt they remain in their ancient places, fixed, immovable, and shorn of none of their attributes as States.

"3. The right to immediate representation in Congress as living, lawful, and legitimate members of the Government.

"4. That the American Union is restored, and stands unbroken, without flaw or blemish, and with domestic tranquility in all her borders in the presence of the nations of the earth."

Mr. President, upon this great question of a restored Union we go to the country. The Army has done all its work, there is nothing more for it to do, and the sons of the Republic have returned to their homes. All opposition to the authority of the Government of the United States has ceased, and peace reigns throughout our borders. Shall the Union in all respects stand restored, and we be again a united and powerful people? Shall trade and commerce return again to their ancient channels, and prosperity attend all the pursuits of the people? You may throw yourselves across the pathway of the people, and by shouting copperhead and sympathizer hope to frighten the timid, but you will not be able to check or turn them in their onward progress, because they now follow a banner upon which is written in letters of light "reconciliation and Union."

The PRESIDING OFFICER, (Mr. CLARK in the chair.) The question is on the amendment of the Senator from Michigan to insert an additional section as section four.

The amendment was agreed to.

The next amendment of Mr. Howard was in section [four] five, line forty-six, to strike out the word "already" before the word "incurred;" in line forty-seven to strike out the words "or which may hereafter be incurred;" in line forty-eight to strike out the words "of war" and insert the word "rebellion;" in line forty-nine to strike out the words "loss of involuntary service or labor" and to insert "the loss or emancipation of any slave; but all such debts, obligations, and claims shall be forever held illegal and void;" so that the section will read:

Sec. [4] 5. Neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for compensation for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be forever held illegal and void.

Mr. FESSENDEN. I did not notice that the fourth section was agreed to. Was it agreed to?

Mr. HOWARD. Yes, sir.

Mr. FESSENDEN. Then I shall move a reconsideration, as I propose to offer an amendment to it.

Mr. HOWARD. I move to amend the amendment to the [fourth] fifth section, in line forty nine, by striking out the words "for compensation for" and inserting the words "on account of," so as to prevent the repetition of the word "for."

Mr. HARRIS. I do not see that that improves it at all. I think it is quite well enough as it is. I would not change it.

Mr. HOWARD. The object is merely to prevent the repetition of the word "for." It now reads, "any claim for compensation for the loss," &c.

Mr. FESSENDEN. It will make better phraseology.

Mr. HOWARD. I propose simply to make it read, "or any claim on account of the loss or emancipation of any slave." It makes it more harmonious.

The amendment to the amendment was agreed to.

The amendment, as amended, was adopted.

Mr. HOWARD. There is one other amendment that escaped my attention. In line thirty the word "that," at the beginning of section three, should be stricken out. It is entirely superfluous. The section will then read:

No person shall be a Senator or Representative in Congress, or elector, &c.

The PRESIDING OFFICER. The amendment will be made if there be no objection, being a verbal amendment.

Mr. FESSENDEN. There is a little obscurity, or, at any rate, the expression in section four might be construed to go further than was intended, and I have rather come to the conclusion that it was best to put sections four and five in one single section; and I ask the Chair, as section four has been adopted and also the amendments to section five, if it will be at any time in order to strike out both and insert a substitute for the two sections.

The PRESIDING OFFICER, (Mr. CLARK.) It is in order now, in the opinion of the Chair, to strike out those sections and insert a substitute, and it will also be in order when the joint resolution is reported to the Senate.

Mr. FESSENDEN. But section four has been agreed to.

The PRESIDING OFFICER. It has been agreed to, but it will be in order to strike that out with something else, and insert a substitute.

Mr. FESSENDEN. These amendments will come up in the Senate in their regular order, as I understand.

The PRESIDING OFFICER. They will.

Mr. FESSENDEN. I will omit offering my amendment, then, until the resolution is reported to the Senate.

The PRESIDING OFFICER. All the amendments proposed by the Senator from Michigan have now been disposed of.

Mr. VAN WINKLE. I offer the following amendment to come in as a new section:

Sec.—. Every person not mentioned or described in section three of this article who shall have engaged in insurrection or rebellion against the United States and against whom no prosecution for treason has been instituted before the expiration of — years from the termination or suppression of such insurrection or rebellion, who shall thereafter before a court of record make oath to support the Constitution of the United States, shall thereupon be forever acquitted and discharged of and from all pains, penalties, liabilities, disabilities, and disqualifications incurred under the Constitution or laws of the United States, or of any State, by participation in such insurrection or rebellion, and if previously a citizen of the United States shall be thereby restored to all rights, privileges, and immunities of citizenship. But nothing in this section contained shall prevent the Congress passing a general or special act of amnesty as to any or all persons included in its provisions before the expiration of the said — years.

I do not propose, Mr. President, to detain the Senate for a moment by advocating the provisions of this amendment. If they do not commend themselves to Senators I am sure that nothing I could say would help the case. The object is easily perceived. It is, if we can, to make a finality of this matter; that while we have excluded certain persons from representation and from participation in the Government, the large class of persons who will still remain shall at some time — and I have left the number of years blank — be released from the pains and penalties they have incurred, or are supposed to have incurred, for it is exceedingly doubtful, I presume, what disabilities the mere fact of having engaged in the rebellion imposed upon them without a trial and conviction of treason. I have framed the amendment with a view, of course, as it is proposed to go into the Constitution, of applying to the future as well as to the present case; and I think if our attention could be drawn to this point, and all the amendments that are proposed here were considered in that light, we should be more able to separate ourselves from the feelings and prejudices of the moment and to act understandingly upon the subject.

I propose by this amendment that all those persons who are not embraced in the third section, which section, I take it, will include the most of those who were the instigators and fomenters of the rebellion, and all against whom no prosecution for treason shall be commenced within a certain number of years, shall upon the expiration of that time, by taking an oath thereafter to support the Constitution, in the usual form, be exonerated from all pains and penalties in consequence of their action. I need not say that there is something due to these people, even when their delinquency is fully admitted. They are now in a situation where they know not what will be their future, and I think it is due to the business of the country and to the more early resumption of the former friendly relations that existed between us and the people of those States, that something of this nature should at this time and in this connection be ingrafted upon the Constitution, or should accompany the section which excludes certain descriptions of persons.

I trust, sir, at any rate, that this amendment, or the spirit of it — for I am not anxious about the words — may receive such consideration from the Senators in the majority as will induce them to give it a fair hearing. It is offered in good faith. I have not shown it or named it to a single person. If there is any responsibility attending it, it is wholly my own. I am certain, from my own knowledge and from the interviews I have had with many of the southern people since I have been here, and from my knowledge and interviews with such persons in my own State, that it is more important to them that some time should be fixed when their disabilities shall terminate than that the time should be either early or late. I have left in blank the time to be fixed. If it was an open question, if it

related only to the future, I should be inclined to fix the time at not exceeding three years; but taking into consideration the circumstances under which we are placed it may be fixed at a longer period if such be the judgment of the Senate. I do not know, at this moment, at what time this rebellion terminated or was suppressed in a legal point of view. I know that in case of foreign war peace is generally made by treaty, and that treaty is not in force until it is proclaimed to be in force by the President, and by that treaty notice is generally given where and when hostilities shall cease; that is to say, in reference to vessels that are in foreign seas and in different parts of the world. There has been, I believe, a proclamation by the President, in which he stated that the rebellion was at an end, but the State of Texas was omitted from that category. Whether that would be the proper time to fix as the time when the war or rebellion terminated or was suppressed I cannot say, but I think that this is an endeavor,

at least, to afford a means by which the constitutional amendments now pending may be made a finality. You exclude by a section already adopted certain persons from being members of this body and from holding other offices. In the next place it is left open to you by the amendment I have proposed until the expiration of whatever number of years may be fixed, to institute proceedings against any others whom you think ought to be proceeded against. Having made the election, then, to exclude one class entirely and to prosecute another class, the residue are those whom I propose to declare freed from the pains and penalties and disabilities and disqualifications they have incurred. It is to meet that case, to make, if I can, a finality of this matter, that I have proposed the amendment, and my own judgment is that the requisite number of States are more likely to adopt the amendment in gross with some provision of this character, at least, accompanying it; that is to say, that the mass of the people South, including a great many who were misled by those upon whom they usually depended for information as to the proper conduct they should pursue, and who were forced into the service under other circumstances, wherein they cannot be said to have been morally blamable, should be relieved and released at once. At present they do not know what is to be their fate, and that uncertainty is preventing things settling down in quiet in the southern States. I ask Senators again to give this proposition a fair consideration before they reject it.

Mr. HOWARD. I hope the amendment will not be adopted. I do not see any propriety in incorporating into the Constitution any provision relating to amnesty or pardon — a subject which is already provided for by the act of 1862 and by the Constitution itself. There is full power already in the hands of the President of the United States under that act of Congress, to pardon every rebel who has participated in the civil war, conditionally or unconditionally, as he may see fit. He has, besides that special clause in the act of 1862, the general pardoning power given by the Constitution of the United States, which he can exercise even before conviction if he sees fit to do so. I therefore look upon this amendment as entirely unnecessary and not productive of any beneficial result. Besides, it looks to me like a deformity incorporated in the Constitution of the United States. We are now settling the fundamental principles upon which our Government is to be conducted hereafter, and I think we should omit any reference to that subject.

Mr. DAVIS. I ask for the yeas and nays on this amendment.

The yeas and nays were ordered.

Mr. SHERMAN. In addition to what the Senator from Michigan has said, it seems to me that this is a subject for legislation, not for constitutional amendment. We have already provided that the President of the United States may do precisely what would be done by this proposed amendment; and if more liberal legislation is required hereafter, and the President fails to extend amnesty so broadly as it should be, Congress has always power to relieve, by a general act or special act, from the penalties of crime, and may provide for a general amnesty by law. I therefore submit to the Senator from West Virginia whether, although his proposition seems to be a reasonable and proper one, it is worth while to put it in a constitutional amendment, when it is of so temporary a character, and the matter may be regulated by law.

Mr. VAN WINKLE. The amendment, it will be seen, removes disqualifications and disabilities. and from what I have heard and read, nobody believes that the amnesty granted by the President will have that effect. At any rate, there is a difference of opinion; it is a moot point as to what effect that amnesty will have; and, again, it is a moot point and has been debated here upon the floor of the Senate, I think, within a few weeks, as to the right of the President to pardon before conviction. These points have both been denied, and denied by those to whose opinions some weight is attached. My reason, therefore, for proposing that this proposition should accompany these amendments to the Constitution is that everybody may know, as it were, in advance, what is likely to be his fate.

The question being taken by yeas and nays, resulted — yeas 8, nays 26; as follows:

YEAS—Messrs. Cowan, Davis, Doolittle, Guthrie, Hendricks, Riddle, Van Winkle, and Willey—8.

NAYS—Messrs. Chandler, Clark, Conness, Cragin, Edmunds, Fessenden, Foster, Grimes, Harris, Henderson, Howard, Howe, Kirkwood, Lane of Indiana, Morgan, Nye, Poland, Pomeroy, Ramsey, Sherman, Stewart, Sumner, Wade, Williams, Wilson, and Yates—26.

ABSENT—Messrs. Anthony, Brown, Buckalew, Creswell, Dixon, Johnson, Lane of Kansas, McDougall, Morrill, Nesmith, Norton, Saulsbury, Sprague, Trumbull, and Wright—15.

So the amendment was rejected.

Mr. HENDRICKS. I now offer the amendment which I before suggested to the second section. It is to strike out all after the word "taxed," in that section, in these words:

But whenever in any State the elective franchise shall be denied to any portion of its male inhabitants being citizens of the United States not less than twenty-one years of age, or in any way abridged, except for participation in rebellion or other crime, the basis of representation in such State shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens not less than twenty-one years of age in such State.

And in lieu thereof to insert these words:

And excluding also two fifths of such persons as have been discharged from involuntary servitude by any proclamation of the President of the United States or by the amendment to the Constitution of the United States since the year 1861, and to whom the elective franchise may be denied.

I will make a very brief explanation of this amendment. The effect of it will be to leave the representation of the southern States just where it was before the war. It is objected and urged as a reason for a constitutional amendment that the slaves, having been made free, are now all counted in the basis of representation, and that the effect of that is to increase the southern representation. To avoid this objection this amendment is proposed, so that the representation from the southern States shall be upon precisely the same basis that it was before the war.

I desire to explain one portion of the amendment. It speaks of persons made free by any proclamation of the President or by the amendment of the Constitution. I do not myself believe that the proclamation of the President had the effect in law of emancipating the slaves; I believe that that work was done by the constitutional amendment; but as other Senators hold that the proclamation had the effect to make the slaves free, out of deference to their views I have used that expression.

Mr. DOOLITTLE. If I correctly understand the effect of the amendment of the Senator from Indiana, it is that until the elective franchise is extended to the colored men of the South they are to be counted in the basis of representation just as they have heretofore been counted; that is, three fifths of them are to be counted, and no more. I am inclined to vote for this amendment, because I believe it would be more likely to be adopted both by the States South and by the States North. The effect of it is to count the colored population of the South as they have heretofore been counted until they shall be enfranchised; and of course when enfranchised they will all be counted. The southern States, in my judgment, would vote for that proposition sooner than for the pending proposition as reported by the committee, because it does not decrease their representation. The northern States would vote for it because it secures them in their proportion of political power against any increase on the part of the southern States by virtue of the emancipation of the slaves at the South, while it tends in the same direction with the amendment reported by the committee as it now stands. That amendment as it now stands excludes five fifths until they are enfranchised. This amendment excludes two fifths until they are enfranchised. For my part, one of the greatest anxieties I have about constitutional amendments if they are to be submitted, is, that they be submitted in such a shape that the States will ratify them, so as to close up this matter and have an end of it. For this reason I am inclined to vote for the amendment.

The amendment was rejected.

Mr. DOOLITTLE. I desire now to move some amendments to this second section. I propose to offer as a substitute for it the following:

After the census to be taken in the year 1870, and each succeeding census, Representatives shall be apportioned among the several States which may be included within this Union according to the number in each State of male electors over twenty-one years of age qualified by the laws thereof to choose members of the most numerous branch of its Legislature; and direct taxes shall be apportioned among the several States according to the value of the real and personal taxable property situated in each State, not belonging to the State or to the United States.

I shall not go into any lengthy argument on the subject of this amendment, but simply state in the briefest words possible the grounds upon which I offer it. In the first place, I am in favor of it upon the ground of

principle. I believe that in the House of Representatives the voting population of the country should be represented; that a voter in Wisconsin should have precisely the same voice in the House of Representatives as a voter in Massachusetts or a voter in Kentucky or a voter in South Carolina; that if twenty thousand voters in Wisconsin are permitted to speak one voice or cast one vote in the House of Representatives, twenty thousand voters in South Carolina should not be permitted to cast any more than one voice or one vote. I believe that a constitutional amendment based upon this principle, the principle of the representation of voters, is more likely to be acceptable to the States than the proposition which is reported by the committee and pending before the Senate. You may say that the end of it may be very much the same, that if the States at the South do not choose to make voters of their colored population that population will not be represented in the House of Representatives, and you may say that is the effect under the pending amendment; but the principle upon which it is based is very different, and when you are asked to vote for a measure upon one principle it is a very different thing from what it is when you are asked to vote for what may perhaps be the same in effect upon another principle.

I am for this, because it is no new conviction with me. It has been the conviction upon which I have acted during the whole of this struggle. It is the ground upon which my political associates in Wisconsin, and I believe the men of all parties in the State of Wisconsin, stand fully committed, in favor of the proposition to let representation be based upon the voters of the several States. If you say to the States of the South, "You must be deprived of one half of your representation or let your negroes vote," that is one thing; but if you say to the States of the South, "As a principle, it is but just that the men who vote shall be represented in the House of Representatives," they may yield to your principle when they may not be prepared to yield to it in the form in which you present it.

Mr. President, I have looked a little into this subject to see what the effect will be. A friend of mine has prepared a table showing how this proposition will operate in the several States. This table shows the number of Representatives to which the States are now entitled, the number to which each would be entitled on the voting basis, and the number to which they will be entitled by the reconstruction amendment as proposed by the committee. The estimate is made upon the figures of 1860. The State of Maine has five Representatives under the present apportionment. She had 100,718 voters in 1860 and upon the voting basis which requires 20,400 voters to be entitled to one Representative in the other House, she would have five Representatives. A Senator asks me

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how the voters can be ascertained. Their number can be ascertained when you take the census, like any other fact. Mr. GRIMES. The amendment of the Senator from Wisconsin provides for the voting basis, not the basis of citizenship. In Wisconsin a man can vote who has been on this continent only six months. Does the Senator intend to include such persons as those in his basis in the State of Wisconsin?

Mr. DOOLITTLE. According to my amendment they would be embraced.

Mr. GRIMES. They would be embraced in Wisconsin; but would they be embraced in Massachusetts?

Mr. DOOLITTLE. It depends on what Massachusetts decides on that question.

Mr. GRIMES. On the State law.

Mr. DOOLITTLE. Certainly.

Mr. GRIMES. Then the purpose and object, or at any rate the legitimate result of this amendment, would be to degrade the elective franchise so as to allow every man to vote on the same platform, on the same basis.

Mr. DOOLITTLE. Not at all. Your amendment proposes to allow the States to say who shall vote. Upon that subject I propose to take the sense of the Senate in both forms, both on the question of "male electors" and "male citizens of the United States." I wish certainly to accommodate myself to the judgment of the honorable Senator from Iowa, for I desire to secure his support, if it is possible, though I have some doubts about that.

Now, Mr. President, to come back to this table, the State of Maine had 100,718 voters in 1860, and she has five Representatives on the basis of population. On the voting basis she would still be entitled to five Representatives; but upon the reconstruction basis as reported by the committee Maine would gain one Representative and have six. So under this reconstruction amendment Maine gains one. How is it with New Hampshire? She had in 1860 65,923 voters, and she has three Representatives on the present basis. New Hampshire would also have three Representatives upon the basis of the reconstruction amendment as reported by the committee. So New Hampshire is not affected, whichever way the thing stands, if it stands on the Constitution as it is, if it stands on the Constitution as the committee propose to amend it, or if it stands on the Constitution as it is proposed to be amended by the amendment which I have just offered.

We now come to Vermont. Vermont upon the present apportionment has three Representatives. In 1860 she

cast 44,644 votes. Vermont would have but two Representatives upon the voting basis, because the fraction would not be large enough to give her three, but under this reconstruction amendment Vermont would still retain three Representatives. Next we come to Massachusetts. Massachusetts upon the present apportionment has ten Representatives. She had in 1860 169,175 voters. Upon the voting basis Massachusetts would have eight Representatives, so that my amendment would reduce her representation by two; but upon the reconstruction amendment as offered by the committee Massachusetts would have eleven, gaining one. Thus we see that Maine would gain one and Massachusetts would gain one, while Vermont and New Hampshire remain the same under the committee's amendment. Connecticut has four Representatives upon the present apportionment. She had 79,246 voters in 1860, so that she would have four Representatives upon the voting basis. Connecticut would also have four Representatives under the proposition of the committee. So Connecticut is not affected; she stands indifferent so far as the number of her representation is concerned. Rhode Island has two Representatives under the present apportionment. In 1860 she had 19,951 voters, so that the voting basis would give her but one Representative, whereas under the reconstruction amendment as reported by the committee she would have two. Thus it appears that upon the voting basis New England would lose four Representatives, whereas under the reconstruction amendment as proposed by the committee she would gain two Representatives. How does it stand with New York? New York now has thirty-one Representatives. She had in 1860 675,176 voters. Upon the voting basis New York would gain three and her representation would be thirty-four. So upon the reconstruction basis as reported by the committee New York would also gain three. New Jersey has five Representatives under the present apportionment. Upon the voting basis, as New Jersey had 121,125 votes in 1860, she would have six, or a gain of one; and according to the reconstruction amendment as proposed by the committee, New Jersey would gain one.

How is it with Pennsylvania? Pennsylvania has now twenty-four Representatives. The number of her voters in 1860 was 476,442. Upon the voting basis, Pennsylvania would have the same number, twenty-four Representatives, her fraction being very large. Upon the reconstruction amendment as reported by the committee she would gain one.

Mr. COWAN. Oh, no. We have one hundred thousand negroes in Pennsylvania, and under that proposition we should lose one.

Mr. DOOLITTLE. Perhaps that may be so. Ohio has under the present apportionment nineteen Representatives. She had in 1860 412,441 voters. Upon the voting basis Ohio would have twenty-two Representatives, a gain of three, whereas, under the reconstruction amendment, she would have twenty, a gain of only one. Indiana, under the present apportionment, has eleven Representatives. She has 272,113 voters. Upon the voting basis Indiana would have thirteen Representatives, a gain of two, whereas upon the proposed amendment of the committee, Indiana would have twelve Representatives, a gain of one. Illinois has fourteen Representatives under the present apportionment, with 359,693 voters. Illinois would have seventeen Representatives upon the voting basis, a gain of three, whereas, according to the proposition of the committee, Illinois would have but fifteen, a gain of only one. Michigan has under the present apportionment six Representatives, with 153,537 voters. Upon the voting basis Michigan would have eight Representatives, a gain of two, while upon the proposition of the committee she would have seven, a gain of one. Wisconsin has six Representatives, with 152,180 voters. Wisconsin, like Michigan, would have eight Representatives on the voting basis, it gain of two, whereas, upon the proposition of the committee, she would have but seven, a gain of one. Iowa now has six Representatives, but she has one of her Representatives upon a fraction. She had but 128,331 voters, so that according to this table her representation would remain the same on the voting basis.

Mr. KIRKWOOD. How does the Senator arrive at the number of voters in 1860?

Mr. DOOLITTLE. By the number of votes cast in the presidential election of 1860. I am speaking on that basis. Perhaps there are still more voters that did not vote, and you might be entitled to more if you counted them all. It would make it still better for you.

Mr. CRAGIN. With the permission of the Senator from Wisconsin I desire to ask him a question.

Mr. DOOLITTLE. Certainly.

Mr. CRAGIN. Suppose there are more voters, would it not change his whole calculation?

Mr. DOOLITTLE. Undoubtedly.

Mr. CRAGIN. Take, for instance, the State of Vermont, adjoining New Hampshire. The population of the two States is about the same, but in New Hampshire the contests are always close, and we bring out almost the last vote.

Mr. DOOLITTLE. You do not lend them any of your voters. [Laughter.]

Mr. CRAGIN. In Vermont, according to the Senator's table, the number actually voting was 40,000 and over, and the Senator reduces her representation from three to two; but if the actual number of votes were counted Vermont would leave the same as New Hampshire. It spoils his whole calculation.

Mr. DOOLITTLE. That maybe so, but my amendment provides for the representation being eased on the voters as returned by the census, so that there will be no mistake about that. If Vermont has the voters she will not lose representation. Every voter in Vermont has just as much right to be represented as a voter in Wisconsin. The calculation on which I am relying is based upon the actual vote cast in 1860.

Mr. FESSINDEN. It is based also, I suppose, on the idea that the southern States will not enlarge their voters but that they will remain as they are now.

Mr. DOOLITTLE. I am taking the actual votes cast in 1860, and supposing that the laws remain the same on that subject. The State of Minnesota is now entitled to two Representatives. She cast 34,790 votes in 1860. Upon the voting basis she would be entitled to two Representatives, the same that she has now, for she has one upon a large fraction at present. California has now three Representatives. She cast in 1860 118,840 votes, which would entitle her at the rate of twenty thousand voters to a Representative, to six Representatives, giving her an increase in her representation of three members. Oregon has one Representative and will have but one, because the voters in Oregon in 1860 amounted to 14,410 who cast their votes in the election that year, and the population of Oregon probably is not such as to entitle her to more than one Representative, and may not be for some time to come. So also of Nevada.

Now, Mr. President, if we look to the late slave States, the State of Delaware under the present apportionment has one Representative. She had 10,039 voters in 1860, and upon the voting basis or any other basis the State of Delaware will have but one Representative. Maryland has under the present apportionment five Representatives. Maryland had 92,502 voters in 1860, and if you give to her the benefit of a large fraction, a fraction of twelve thousand out of twenty thousand which entitles to a vote, Maryland would still have, on the voting basis, five Representatives and under this reconstruction amendment she would have the same.

West Virginia has three Representatives under the present apportionment. Her voters in 1860 are computed to be about 50,000 — the accuracy of that calculation I cannot vouch for — which would give her the same number of Representatives which she now has. Virginia, the remaining part of Virginia, is entitled to eight Representatives under the present apportionment. On the voting basis of 117,223, she would be entitled to but six Representatives, which would be a reduction upon the State of Virginia of two, and the same reduction follows under the apportionment which is proposed by the committee.

Kentucky has now nine Representatives under the present apportionment. Kentucky had 145,258 voters in 1860, which would make her entitled to seven Representatives on the voting basis, and a large fraction, almost entitled to eight; but upon the voting basis Kentucky would lose two, and upon the proposition of the committee Kentucky will lose two of her Representatives. The effect upon her, therefore, is the same. Missouri is entitled to nine Representatives under the present apportionment. Missouri had 165,518 voters in 1860, which would entitle her to eight Representatives, which would be a loss of one when she is reduced to the voting basis. North Carolina is entitled to seven Representatives under the present apportionment. Upon the voting basis; as she had 96,230 voters in 1860, she would be entitled to but five, receiving one upon the large fraction of 16,000. South Carolina, under the present apportionment, is entitled to four Representatives. I have here an estimate as to the amount of votes that were cast in the State of South Carolina, as her Legislature elects the presidential electors, and there-

fore no accurate computation could be made as to the voters of South Carolina; but her voters were estimated at about 50,000. It is calculated that upon the voting basis, therefore, South Carolina would have three Representatives, and she will have the same under the proposition of the committee. Georgia is entitled to seven Representatives under the present apportionment. In 1860 Georgia had 106,365 voters, which would entitle her upon the voting basis to six Representatives. Florida had but 14,347 voters in 1860. She is entitled to but one Representative under the present apportionment, and cannot, under any circumstances, at present at least, be entitled to more than one. Alabama has six Representatives under the present apportionment. She had 90,357 voters in 1860, which, upon the fraction of ten thousand and upwards, would entitle her to five Representatives upon the voting basis, and she would be entitled to the same number under the reconstruction amendment proposed by the committee. Mississippi is entitled to five Representatives under the present apportionment. She cast 69,120 votes in 1860, which would entitle her to four Representatives upon the voting basis, which would be a loss of one. Louisiana is entitled to five Representatives under the present apportionment. She had 50,510 votes

in 1860, which would entitle her to but three Representatives on the voting basis.

Of course this is based upon the assumption that the colored people of the South are not yet permitted to cast votes. When they become enfranchised these States will be entitled to increased representation. Texas is entitled to four Representatives under the present apportionment. She cast 60,986 votes in 1860, which would entitle her, on the voting basis, to three Representatives, or a loss of one. Arkansas is entitled to three Representatives under the present apportionment. She cast 54,053 votes in 1860, which would entitle her to three Representatives upon the voting basis. which is the same as upon this report of the committee. Tennessee is entitled to eight Representatives under the present apportionment. She had 145,333 votes in 1860, which would entitle her to seven Representatives, and a large fraction, but she would lose one if placed upon the voting basis, and the same upon the report of the committee.

Mr. President, if we recapitulate the whole according to the computation of this table, under the present apportionment the North or the old free States have one hundred and fifty-seven Representatives, the South or the late slave States eighty-five, making a majority in favor of the North or the old free States of seventy-two in the House of Representatives. Upon the voting basis, the North or the old free States will have one hundred and seventy-two Representatives, while the South or the old slave States will have but seventy, and thus give to the old free States a majority in the Electoral College of one hundred and two. Thus it will be seen that this proposition to base representation upon the voting basis is three in favor of the old free States; and while New England, which, with her comparatively small population, has twelve Senators in this body, loses but four, and the great agricultural States of the Northwest, one of which I represent, will gain twelve in the House of Representatives, while such are the results, it seems to me it does not militate at all against the proposition which I have introduced. California, which now has three, would be entitled to six Representatives. I desire not to dwell at any great length on this subject.

Mr. WILLIAMS. Before the Senator leaves that part of his argument, I should like to ask him a question with his permission. Representation is now based upon population, and it is estimated, and I suppose there is not much doubt about the correctness of the estimate, that there are in the State of New York four hundred thousand foreigners not naturalized. Those foreigners give to the State of New York at this time three Representatives in the House of Representatives. The Senator proposes, by adopting voters as the basis of representation, to strike out those four hundred thousand foreigners, and at the same time he says New York will gain three in her representation. I should like to have an explanation of that difference.

Mr. DOOLITTLE. Mr. President, there were cast in 1860 4,731,193 votes, which, according to that estimate, would give 20,400 voters to each Representative elected. The State of New York cast in 1860, 675,156 votes, which, divided by 24,400, gives New York thirty-four Representatives.

I think these tables will be found, upon calculation to be sufficiently accurate to illustrate all that is necessary to be shown upon this subject. The principle that voters should have an equal voice in the choice of Representatives in the House of Representatives, the popular branch of the Government, is a principle upon which we can stand and contend. We can ask men, even when it disfranchises the States of the South, to vote for that, when you cannot so well go to them and say; "Gentlemen, you must consent to lose one third, one fourth, or one half of your representation unless you will allow the colored population to vote." That is a different question. You may say the effect produced is the same; but when you are arguing for a principle, that is to say, that the voice of the voter is what is to be heard in the House of Representatives, they will yield to the principle and accept it and vote for it when they would not vote for it presented in its present form. I ask for the yeas and nays upon this amendment.

The yeas and nays were ordered.

Mr. EDMUNDS. I am satisfied that my friend from Wisconsin is entirely in error in respect to the number of voters in the State of Vermont. He bases himself merely upon the election returns of the election of 1860, if I understand him. The population of Vermont is more than 315,000; and if my recollection is not very much out of joint, in times gone by, when contests were approximately close there, we cast more than 60,000 votes; and I have no doubt today that the number of male citizens of the State of Vermont, of that population of 315,000 and upward, is more than 60,000; so that in the particular instance that he recites as to that State there is an undoubted error in his figures of more than 16,000 voters; and if, as it often happens in States where the contest is not close, similar differences exist, the value of his tables is of course totally destroyed. Mathematics is one of the sciences where, if you leave out one link or make one error, the result flows through the whole problem, and therefore it will undoubtedly turn out that there is no reliance whatever to be placed upon the figures which my friend from Wisconsin has so ingeniously framed.

But, Mr. President, the question is broader and deeper than the mere selfish one of gain to this State or to that State. It is a question which enters into the profoundest philosophy of government, whether it is a true principle that the mere accident of the right to vote is to determine the representation of a community. The fathers who founded this Government acted upon the idea not only that the representation, as a principle, in general was to be based upon population, independent of the franchise, independent of citizenship, but there was also always to go with it, for the security of every part of the country, that other principle, that direct taxation, the involuntary burdens which the citizen must bear, must stand always guarded by the right of representation; and therefore it was provided that representation and direct taxation should always go hand in hand in the same ratio.

Now, the proposition of my friend from Wisconsin is that we shall discard this time-honored principle, which in my judgment is an impregnable one, that we shall discard the original principle that all society in some form is to be represented in a republican Government, and select a particular few, who are themselves always to decide how that few shall be made up, who are not only to exercise all the powers and privileges of Government, but to exercise that other power and privilege of imposing the burdens upon some other section or some other class of the community; that is to say, if the East happens to be numerous in men and short of money, the eastern men may vote the taxes upon the western property, or the reverse.

I know how impatient the Senate is, and without entering at large upon this interesting and profound topic, in my judgment, the proposition of the Senator from Wisconsin is one which is full of inherent error, both in principle and practice, and I shall vote against it.

Mr. POLAND. I had prepared some remarks with reference to these amendments generally, and in the course of those remarks I had attempted to discuss the question that is raised upon this particular amendment. Perhaps it may be appropriate that I should deliver them now, although all that I might say is not perfectly germane to this amendment.

Mr. DOOLITTLE. Does the Senator from Vermont desire to go on this afternoon, or would he prefer to go on tomorrow ?

Mr. POLAND. I am not particular.

Mr. DOOLITTLE. If the Senator will give way I will move that the Senate proceed to the consideration of executive business.

Mr. POLAND. It is immaterial to me.

Mr. HOWARD. I hope that motion will not be agreed to.

Mr. SHERMAN. There are quite a number of amendments to be offered, and I think we might as well proceed with them now, and the Senator from Vermont, if he desires it, can have the floor tomorrow.

Mr. POLAND. It is quite immaterial to me whether I proceed tonight or tomorrow morning. I give way to the motion for an executive session.

Mr. DOOLITTLE. I understood the Senator from Vermont to say that he rather preferred to submit his general remarks on the subject of reconstruction upon this amendment, and he desired to do it before the amendment was acted on by the Senate. It was with that view that I rose to move that the Senate proceed to the consideration of executive business.

Mr. POLAND. I yield to your motion.

The motion was agreed to; and after some time spent in the consideration of executive business, the doors were reopened, and the Senate adjourned.

RECONSTRUCTION.

The Senate, as in Committee of the Whole,

resumed the consideration of the joint resolution (H. R. No. 127) proposing an amendment to the Constitution of the United States, the pending question being on the amendment proposed by Mr. DOOLITTLE, to strike out the second section of the proposed article and insert in lieu of it the following:

After the census to be taken in the year 1870, and each succeeding census, Representatives shall be apportioned among the several States which may be included within this Union according to the number in each State of male electors over twenty-one years of age qualified by the laws thereof to choose members of the most numerous branch of its Legislature; and direct taxes shall be apportioned among the several States according to the value of the real and personal taxable property situated in each State not belonging to the State or to the United States.

Mr. POLAND. Mr. President, the few observations which I propose to make are addressed to the general merits of the proposition which is before the Senate, but some of them are addressed to the very point of this pending amendment. I read in a morning paper that it was expected that I would present some important and new views upon the subject. The views that I shall present, Mr. President, may be important in the sense that almost any view that any man may present who has a vote to give on such a subject is important; but that I shall be able to say, after six months' discussion of this subject, anything new is more than I expect.

Mr. President, all the questions involved in the proposed amendments to the Constitution have been so elaborately and ably discussed on former occasions during the present session that I do not feel at liberty to attempt to argue them at length and in detail. I do not propose to do more than to state, in the shortest and plainest manner I am able, some of the reasons for my action upon the propositions submitted to us by the committee.

The clause of the first proposed amendment, that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States," secures nothing beyond what was intended by the original provision in the Constitution, that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

But the radical difference in the social systems of the several States, and the great extent to which the doctrine of State rights or State sovereignty was carried, induced mainly, as I believe, by and for the protection of the peculiar system of the South, led to a practical repudiation of the existing provision on this subject, and it was disregarded in many of the States. State legislation was allowed to override it, and as no express power was by the Constitution granted to Congress to enforce it, it became really a dead letter. The great social and political change in the southern States wrought by the amendment of the Constitution abolishing slavery and by the overthrow of the late rebellion render it eminently proper and necessary that Congress should be invested with the power to enforce this provision throughout the country and compel its observance.

Now that slavery is abolished, and the whole people of the nation stand upon the basis of freedom, it seems to me that there can be no valid or reasonable objection to the residue of the first proposed amendment:

Nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.

It is the very spirit and inspiration of our system of government, the absolute foundation upon which it was established. It is essentially declared in the Declaration of Independence and in all the provisions of the Constitution. Notwithstanding this we know that State laws exist, and some of them of very recent enactment, in direct violation of these principles. Congress has already shown its desire and intention to uproot and destroy all such partial State legislation in the passage of what is called the civil rights bill. The power of Congress to do this has been doubted and denied by persons entitled to high consideration. It certainly seems desirable that no doubt should be left existing as to the power of Congress to enforce principles lying at the very foundation of all republican government if they be denied or violated by the States, and I cannot doubt but that every Senator will rejoice in aiding to remove all doubt upon this power of Congress.

The second article of the proposed amendments involves many considerations, and opens a much wider field for discussion. I suppose it is the purpose of the Union Republican majority in Congress, when they shall have agreed upon articles of amendment to the Constitution to be proposed for adoption, to say to the southern States which seceded, joined the confederacy, and waged war against the national Government, that as preliminary to their again becoming acting members of the national Union by their Senators and Representatives in Congress

they must adopt or ratify such amendments. Indeed, one of the bills reported by the committee, accompanying the proposed amendments, proposes this directly, and is a part of the committee's plan of reconstruction. It is objected in the outset to this that the States and people who have remained loyal to the Government during the war for the suppression of the rebellion have no right to affix such or any condition whatever to their return; that, having laid down their arms and ceased active hostilities against the nation, and acknowledged their allegiance and willingness to obey the national laws, no reason exists why their representatives should not be immediately admitted to their seats in Congress and participate in the legislation for the nation; and that to refuse this is really to deny to those States their proper constitutional rights.

No public or political question has ever arisen in this country that has excited more ingenious and earnest debate than the legal and political condition of the seceded States after the suppression of the rebellion by the military power of the nation. The discussion began long before the war ended, and before there was occasion for any practical application, and it has continued ever since. I do not purpose to go into this question or to attempt to prove by argument that these States did or did not lose or forfeit their corporate existence as States by their acts of secession and rebellion, or that they are now in or out of the Union. I may say, however, that I was never able to see as clearly as others could anything so illogical and absurd in the doctrine that these States actually forfeited their rights as States and lapsed into the condition of Territories belonging to the Government, requiring reorganization and readmission into the Union as much as if they had never been admitted. Their acts of secession were of course entirely void, and of themselves had no effect; but when the great majority of the people of these States abandoned and forswore all allegiance to the Union, formed themselves into a hostile confederacy, filled every official place in the State with enemies of the Union, and then used all the official machinery of the State, in common with the personal efforts of the great majority of the people, in carrying on for years a bloody war against the nation, it seems to me almost absurd to say that the nation might not, if it so elected, treat them as having forfeited all rights to be considered existing States in the Union, and treat them when subdued as so much unorganized territory.

The difficulty now lying in the way of taking this ground and basing the reconstruction or restoration of the seceding States upon it is that the national Government has hitherto, from the beginning of the rebellion down to the present time, proceeded upon the opposite theory; that is, that the States, as such, still existed; that the corporate life of a State was not lost or destroyed by the passage of ordinances of secession or the prosecution of armed hostility by the majority of its citizens. All departments of the national Government having for so long acted upon this ground, it would be exceedingly embarrassing to unsay and undo so much that has been said and done; indeed, it could hardly be done without greatly aggravating and enhancing the difficulties with which the subject of restoration is now beset. Nothing short of absolute necessity could now justify the Government in ignoring State existence in the members of the late confederacy and reducing them to the condition of unorganized territories.

Is it necessary for the protection and safety of the always loyal part of the nation to do this? May we not without this require such guarantees and conditions from the seceding States, prior to allowing them to participate in the general direction and government of the nation, as in our judgment the national safety requires?

By the most formal and solemn acts of legislation these States withdrew or attempted to withdraw from the national Union; they abjured all allegiance to the national Government; they withdrew their Senators and Representatives from the national Legislature; they formed themselves into a separate and hostile confederacy, of which each of these States was a constituent member; and for four years as a separate nation of States, and by the individual action of the great majority of their people, they made most cruel and unrelenting war against the loyal part of the nation.

Now, conceding that all this did not destroy the corporate existence of each or either of these States as a legal essence, it must be admitted that all actual existence of legal relation or connection between those States and the national Union was severed and destroyed. It cannot be claimed that while these States were acting as States in the confederacy and occupying the position of armed and hostile belligerents toward the United States they were at the same time entitled to claim and exercise the rights of States in the Union; to be represented in its Legislature, and participate in its Government. We succeeded by our superior physical power in overthrowing and crushing this hostile confederacy, and compelled them to lay down their arms. Now, before these States can resume their former places in the Union loyal State governments must be instituted and take the place of the disloyal ones that have existed, and then the legal relation and connection between them and the General Government must be restored by some power or department of the General Government.

Now, in what department of the national Government does this power rest to say when the people of the

insurgent States have returned to loyalty, whether the State governments set up anew are really and truly loyal, and then to restore the broken and severed legal relations between them and the Union? Clearly, in my judgment, it must rest in and with the law-making power of the Government, the representatives of the States and the people, the two Houses of Congress. In the progress of reconstructing or restoring these States to loyalty and their former position in the Union, the executive department of the Government has assumed to dictate terms and conditions to those States, which they complied with. The terms and conditions imposed were wise and just in themselves, and I do not take it upon me now to say they were not rightfully exacted by the Executive. But I do say that, in my judgment, there is far more ground of doubt as to the rightful power of the merely executive branch of the Government to do this than there is as to the power of Congress, the substantial law-making power of the nation, to exact the same or other like conditions.

It has been said that unless these States have really forfeited their State existence and are out of the Union, we have no more right to exact or impose conditions to their return than we have to impose similar terms upon New York or Ohio; that a State cannot commit treason or forfeit its existence by the commission of crime. But there cannot well be a State, exercising and performing its functions as such, without people; and the idea of the existence of a State in harmony with and yield-

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ing loyalty to the Union, and the people who inhabit it at the same time armed and hostile rebels, is certainly an anomaly.

Now, the people of these States are the same who have been rebels, the same with whom we have been at war for years, and from whom we have just succeeded in wresting their arms. Now, can it be possible that we are at once bound to admit these people to actively participate with us in administering the General Government; that we have no more power or right to test their loyalty or require security for it than we have of the people of a State which has always been loyal and true? It seems to me to be confounding all distinction between right and wrong, between innocence and crime, between loyalty and treason.

It is said there is no warrant in the Constitution for such a course, and therefore we cannot do it. The truth is, the framers of the Constitution never contemplated such a state of things and made no provision for it. The Constitution, to be sure, provides for the suppression of insurrections; but evidently this never contemplated an extensive rebellion so formidable as to produce for years a division of the nation and a separate *de facto* government. The real question is, not whether there is any express warrant in the Constitution for it, but whether there is anything in the letter or spirit of the Constitution that forbids it. In my judgment there is not. It is sanctioned by principles of substantial justice and right, and by the great law of self-protection and defense, which is as applicable to communities and nations as to individuals.

I conclude, then, that there is no objection to the exercise by Congress of the power to impose any condition or limitation to the return of these States to participate in the government of the nation, which shall be just in itself, and necessary for the safety and welfare of the nation.

If, as I insist, we have the right to require of these States suitable and sufficient conditions or guarantees, and that, too, by amendments of the fundamental law, then several questions present themselves upon the amendment proposed. Do we need this amendment for our future protection and the peace and safety of the nation? Does this amendment furnish it sufficiently? Is it doing any wrong or injustice to the white people of the South? Is it just to the negro population of the South? This amendment leaves the general basis of representation, as fixed by the Constitution originally, upon numbers or population. In some of the discussions of this subject in this Chamber it has been strenuously insisted that this is not the true and just basis upon which representation should be based, but that it should rest upon the basis of voters. I entirely disagree with those who have argued for this new doctrine, and in my mind it is clear that the existing basis is the only true one, the only one consistent with the true idea of a representative republican government. The question is not, perhaps, directly involved in this amendment, but still it is not wholly aside from my line of argument. All the people, or all the members of a State or community, are equally entitled to protection; they are all subject to its laws; they must all share its burdens, and they are all interested in its legislation and government.

Notwithstanding this no State or community professing to be republican allows all its people to vote. Every one fixes for itself some rule which, in its judgment, will furnish a body of voters or electors who will most wisely and safely represent the wishes and interests of the whole people. The right or franchise of voting has, probably, been more widely extended in these American States than in any other professed republican Government, but in the most liberal of these it has always been confined to a small minority of the whole people. In none of our States

have females, or males under twenty-one years of age, ever been allowed to vote. In many of the States the right of voting has been restrained within much narrower limits. Persons coming to this country and establishing their permanent residence here are required to remain five years and then to go through an established process of naturalization before they are allowed the privilege of voting. Yet we all know that many females are far better qualified to vote intelligently and wisely than many men who are allowed to vote; and the same is true of many males under twenty-one, and of foreigners who have not resided here for the period of five years. The truth is that the whole system of suffrage of any republican State is wholly artificial, founded upon its own ideas of the number and class of persons who will best represent the wishes and interests of the whole people. The right of suffrage is not given to a particular class because they have any greater interest in the Government, or because they have any more natural right to it than others, nor to exercise it for themselves and in their own behalf, but is given to them as fair and proper exponents of the will and interests of the whole community, and to be exercised for the benefit and in the interest of the whole.

The theory is that the fathers, husbands, brothers, and sons to whom the right of suffrage is given will in its exercise be as watchful of the rights and interests of their wives, sisters, and children who do not vote as of their own. While the rules of suffrage are different in the different States, the plan of basing representation in the national Legislature upon the number of voters in each would be manifestly unjust; it might with the same propriety be based upon the number of members in the Legislature of each State. But if the rules of suffrage were the same in all the States, the adoption of such a rule for national representation would be manifestly unjust. The Union contains many very recently settled States, and by reason of the great extent of unsettled country all still have, such must be the case for many years to come. These new States to a great extent are settled by emigration from the older States, and it has been and will ever continue the case that a much larger proportion of this emigration are males. The consequence is that the newly settled States contain a very much larger proportion of males than the older States, and therefore a much larger ratio of voters.

Can it be justly claimed that five thousand people in Nevada or Colorado should have the same voice in the Government as twenty thousand people in Massachusetts or New York, even though the number of males above twenty-one were the same in each? I have said more than was necessary upon this particular point. By the existing Constitution the States holding slaves, in addition to their other population, were entitled to have three fifths of their slaves counted in ascertaining their share of representation. By the amendment of the Constitution abolishing slavery, which was really one of the results of the war, this entire mass of slave population, counting by millions, were made free, and as the Constitution stands the States where slavery existed would now be entitled to have the remaining two fifths added to their numbers for representation, although no one of them all is allowed to vote.

This very fact, it seems to me, furnishes a very sufficient reason for a readjustment of representation among the States, and an answer to the often-repeated question, why amend the Constitution at all? With no amendment on this subject the late slave States come into the lower House of Congress with a much larger representation than ever before. Is it safe to do this, is it just to the loyal portion of the nation who have borne such immense burdens to maintain its existence? If not, I hold we are not bound to encounter any such peril. For a long period of years sectional hatred toward the North had been cultivated in the South, in consequence of our dislike and condemnation of their wicked and anti-republican system of human slavery. This feeling was excited and fomented by the arts of ambitious and designing men till it broke out in a gigantic rebellion for the purpose of separating from us and forming separate government for themselves — the most terrible and bloody civil war the world has ever seen, lasting for four years; characterized by almost innumerable instances of cruel and barbarous hate on the part of the insurgent States. We finally succeeded in putting down the rebellion, overthrowing the government they had set up, and adding the mortification of total defeat of their cause to their other reasons for hating us and disliking our Government. These people have submitted to the national Government because they have been compelled by force to do so.

But have we any evidence that justifies the belief that they are now ready to yield willing allegiance to the Government and obedience to its laws? All the mass of evidence taken by the reconstruction committee, the tone and sentiment of the almost entire southern press, the information derived from private sources, concur in showing that as yet no such thing exists to any considerable extent, and that the feeling of hostility to the national Government and northern people is as great now as it was while the war was raging, and that the submission to the laws and authority of the Government is the enforced submission to superior power. Does any one doubt that if an opportunity was now offered for an effectual separation it would not be embraced by a far larger majority of the southern people than that by which their acts of secession were adopted?

Looking at the circumstances we could hardly expect to find it otherwise now, and I respect those people

more for the open and undisguised avowal of their sentiments than I should if they hypocritically pretended to acquiesce cheerfully and rejoicingly in their own defeat. We must rely upon time, emigration, the intercourse of business, interchanges of kindness and good will, and especially the beneficent and protecting care and influence of the Government to foster and build up a feeling of attachment to the Union and to allay the bitterness and asperity now existing. In this view it has seemed to me that it was not so desirable as many others have believed it to be that great haste should be made in their restoration, and that our reunion with them would be much more likely to be harmonious and lasting if done coolly and deliberately than if we rushed to embrace each other.

But the question is, whether in the present state of facts it is safe and just to the nation to admit these States to participate in the government of the nation upon such terms as will incur any hazard of their being able to take the control of it, and if they choose injure or overthrow it? I have heard it asked what harm they could do if admitted to full representation in Congress and were able by political affiliations and alliances to control the legislation of the nation.

I will refer to but one of the many things which might be most disastrous to the people of the loyal States. To carry on the war and suppress the rebellion we have incurred a debt to the enormous amount of \$3,000,000,000. The great bulk of this debt is held by the people of the North. Much of it is held by capitalists, but not all, by any means. It has entered into all the transactions of society and business. All public trusts, whether educational, charitable, or religious, are invested in it, as well as nearly all private trusts for widows, minors, or others. The entire currency of the country is composed of it or based upon it. In addition to this it is most extensively held among the people; in my own State I know that almost every man who had any money to invest, whether the amount was great or small, now holds it in Government bonds. Indeed, I think I may say that except what is invested in business or in business corporations, the great mass of the money capital of the North is now in the national securities. To pay even the interest on this debt and our immense annual pension-list will require taxation for us of unexampled severity for many years to come.

Now, this debt has all been incurred in putting down the southern rebellion; our great pension-list is to reward or reimburse those who have suffered on our side in the same cause. The war to a great extent has devastated the South; very many have been made poor and destitute; they have lost their slaves, whose value they counted by thousands of millions; almost every one suffered loss by the bubble of the rebel debt; they have their thousands of maimed and disabled men and their thousands of widows and orphans dependent upon them for support, and for whom no provision can or will be made by the nation. Under these circumstances will they not be restive under our heavy taxation to pay our national debt and our pensioners? Say what we will, say what they will, the truth is that if they can avoid aiding in its payment they will do so, and pretexts enough will be found in some fancied or pretended injustice to them on our part to justify such action on theirs. In saying this I do not mean to assert that these people are more faithless or less sensible of obligation than we are, for I have very little doubt that under the same circumstances we should do the same thing. It is hardly in human nature to do otherwise.

It is said we ought to be magnanimous and trustful toward these people; put full faith in their promises and oaths; that we have no right to assume they will not keep them. I would certainly extend all magnanimity to them. I would trust all their oaths and promises which I believed they would keep. But I should hardly desire to trust them to fulfill a promise which under the same circumstances I fear I should myself find some excuse for breaking.

But I do not think we are specially called upon to trust or put faith in official and governmental oaths taken by our southern friends. Can they ever be more solemnly bound to the Government and to yield it their allegiance than they were at the very moment they seceded and violated their oaths? Our faith can hardly be strengthened by our experience.

This class of oaths has not in latter years been found very binding on the individual conscience, and of them we may say, with Hudibras—

"Oaths are but words, and words but wind,
Too feeble implements to bind,
And hold with deeds proportion so
As shadows to the substance do."

But what have we to fear from them if admitted into Congress with all the representation they would have without any amendment of the Constitution? The North would still greatly outnumber them, and could always vote them down.

It is sneeringly asked, do you not consider yourselves their equals? Are you such cowards and poltroons as to be afraid of being beaten in debate and overthrown by these southern gentlemen with such odds in your favor? It is not hard to answer these questions in fact, but it is hard and humiliating to be compelled to acknowledge where the real danger lies. For many years prior to the rebellion the North had a large numerical superiority over the South, and a much larger delegation in Congress. She was still more largely her superior in wealth, in business, and in all material and scientific advancement. But notwithstanding all these advantages to the North, the South ruled the nation. Why? The answer is short: by the aid of her northern allies.

To go back no further than the war of the rebellion: did we not have many men in the North who sympathized with the rebels; who counseled resistance to the draft, and threw every obstacle in the way of the successful prosecution of the war; who rejoiced at our defeats and rebel victories? Did not a large party in a national convention resolve that the war for the suppression of the rebellion was a failure and ought to be stopped? Now, if men could be found who would do this when the nation was in the very mortal agony to preserve its existence, is it uncharitable to suppose that to make a successful political alliance and get into power, men would not be found who would unite on a platform of repudiation of the national debt? Why, in my part of the country the war cry of a certain party has been "Taxation of the national securities!" which was but a partial repudiation of the contract of the Government. I do not desire to dwell upon this point; it is not a pleasant theme either for reflection or discussion.

Considering the immense pecuniary stake the people of the loyal States have in the national securities, and the universal disaster and calamity which would attend their repudiation, or even any great distrust of them, it behooves us to be cautious and sure that we open no possible door for the entrance of such danger. In my judgment, the admission of the southern representatives without such an amendment of the Constitution as the new and changed condition of southern population requires in order to be just, would subject us to that very peril; indeed, that it would be sure to come. I would prevent it.

Will this amendment, if adopted, furnish the needed protection; or in other words, will the South, even with the aid of northern allies, be able to obtain the control of the Government or of Congress?

If these States refuse to extend the right of suffrage to the colored men their representation will be confined to the white population. This number, especially of males above twenty-one years of age, has largely decreased during the war, and this deduction, together with that to be made for the three fifths of the slave population, would so reduce the congressional representation of the seceding States that no reasonable fear need be entertained that even with the aid of northern allies would they be able to obtain control of the Government. If, to enlarge their political power and representation in Congress, they extend suffrage to all the colored men, such an element of loyalty would thereby be infused into the ballot-box that, added to the white loyalty existing there, we might safely count upon a portion of their representation being reliable, true Union men, and thus avoid a solid sectional vote against the interests of that part of the country which has saved it. In my judgment, there is no reasonable ground of fear, whether they do or do not extend suffrage to colored men, that the control of the national Government can be placed in disloyal hands.

Will the adoption of this amendment work any wrong or injustice to the white people of the South?

While slavery existed they were allowed representation upon three fifths of their slaves. It is somewhat difficult to see any principle upon which this basis was adopted. If they stood upon the same footing as the non-voting white population, then they should have had representation for the whole number; while if they were regarded as property merely they should not have been counted at all, as no property qualification was established or allowed in other respects. If any representation at all was allowed, it was proper that its exercise should be given to the masters, as the condition of absolute dependence and submission in which the slaves stood rendered all free and intelligent choice impossible on their part, and if the slaves had any interest to be protected it was the master's and not theirs. The master might possibly be regarded as the head of a family, of which the slaves formed a part, and so their proper representative; but I agree that the analogy is exceedingly faint. But the compromise by which this partial representation was allowed for slaves had probably very little foundation in any just principle of representation, but was one of the arbitrary compromises by which the conflicting interests of the two sections were adjusted. The North consented to so much representation, in consideration that direct taxes should be laid in the same manner. Like all the compromises that have been made, the South had the best of it, as they had a large and constant representation from it, while the direct taxes have been too small and unfrequent to furnish any corresponding advantage to the North.

But slavery is over and ended. The slaves have been made free. The masters can no longer claim to represent them, either on the ground that they are members or dependents of their families or that they own them as their

property. The former ruling class in the South say, "These people, now having become free persons, we are entitled to have our representation raised by the enumeration of the whole for that purpose." "Very well," say we, "let the same rule of suffrage extend to them as is applied to the white people, and be represented for them all." "By no means," it is answered; "they are too ignorant to know how to protect their own interests in voting, and therefore we will vote for them; and still more, we cannot permit them to vote because it would tend to elevate them socially to something like the elevated plane upon which we stand, which we will not submit to."

Is there any just ground upon which the southern whites can claim that they should represent the negro population, especially those lately held in slavery? Do they stand in the same relation to them that the fathers, husbands, and brothers of a northern community do to their non-voting women and children, whose interests are as dear to them as their own? How opposite in theory and in fact is the relation between them. They do not regard them as having a common interest to be supported, but as a hostile element in society to be spurned and crushed.

It seems to me perfectly manifest that upon no just principle should representation be allowed to the whites on account of the negroes. Suppose we tort this by the actual choice of the negroes themselves.

If the negroes were allowed to choose representatives themselves, and to choose between their former masters or others like them and men like the senior Senators from Massachusetts and Ohio, which would be elected? I would be willing to wager well on the success of my friends here. I think it perfectly just for us to say, "If you will not let these people vote you shall not alone represent them, but we will do it jointly. We believe we have their true interests at heart. quite as much as you; we believe we understand their wants quite as well, and we are satisfied they will be more content under our joint representation than under yours alone."

Does this amendment do justice to the colored people of the South? Mr. President, I am sorry to feel compelled to say that I do not think it does. I cannot feel satisfied with a scheme of reconstruction of these rebel States which gives no direct and immediate benefit to the only class of loyal people living in them. When I remember how loyal and faithful these people ever proved; how they fed, clothed, concealed, and guided our prisoners who had escaped from rebel prisons and starvation; how faithfully and truly they brought us information and guided our troops; and more than all, how gallantly they fought by the side of our men, and how nobly they yielded their lives to save the nation, I feel that something more direct should be granted to and done for them. I should be much better satisfied if the right of suffrage had been given at once to the more intelligent of them and such as had served in our Army. But it is believed by wiser ones than myself that this amendment will very soon produce some grant of suffrage to them, and that the craving for political power will ere long give them universal suffrage. Such I know to be the opinion of many intelligent Union men of the South with whom I have conversed. I trust the result may be as they predict, and that the day may come when in all the nation, as in my own free State, the law shall make and know no difference between men on account of race or color. Believing that this amendment probably goes as far in favor of suffrage to the negro as is practicable to accomplish now, and hoping it may in the end accomplish all I desire in this

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respect, I shall vote for its adoption, although I should be glad to go further.

The substitute for the third section, which we have adopted, disables the leaders of the rebellion both civil and military, from holding office unless restored by act of Congress. Can the South, can the men who are thus disabled, complain of this? Were ever men who had been guilty of armed rebellion against their lawful Government treated with such lenity? The history of the world shows no parallel of mercy like this. Never before was there a rebellion of half the magnitude of this, I might say of a hundredth part the magnitude of this, that the streets did not run with the blood of the offenders. A war without cause, or pretended cause, except that the opposite party had carried the election in a constitutional way, which resulted in killing and disabling probably half a million men on our side, involving us in a debt of \$3,000,000,000 to burden us and our children after us, and we exact as a penalty for it, and as a measure of safety for ourselves, that the leaders, instead of being hung shall not hold office unless Congress shall for their good behavior or other cause remove the restriction. What if they were the subjects of a political delusion? What if they had been taught that a State had the constitutional power to secede? Have not all rebellions had as good a foundation, and those who were hanged for it been as sincere in their belief in the justice of their cause as any man in this rebellion was? This has never been regarded as any answer to the legal liability. If a man or set of men make war against their Government they do it at the peril of making the war successful or of taking the legal consequences.

If when the rebellion was over we had said to every man engaged in it, "We will allow you to retain your life and your property, but you shall never participate in the Government of the country you have attempted to

destroy, by voting or holding office," it would have been all they could have expected or had any right to expect. This is the basis upon which Maryland, Missouri, and other States have settled it for themselves.

But we leave the great mass utterly untouched, and the leaders with their lives, their property, the full enjoyment of all their civil rights and privileges, with the right of voting for all officers, both State and national, with the single restriction they shall not hold office. The disproportion between the cause and the consequence is so great as to almost make it ridiculous. I know it is said that this is a measure so harsh and severe that it will not be accepted by the South. But I do not believe so; on the contrary, I believe it will be acceptable to the masses, that they will consider it a very easy atonement, and that if there is anything like punishment in it, it falls where it is deserved. If there be any included in this class (as it is agreed there may be) who were really forced into the rebellion against their will, it will be very easy to procure absolution by making the fact appear to Congress.

The remaining propositions of amendment, declaring the sacred and inviolable character of our national obligations, and the illegality and invalidity of the rebel debt, and of any compensation for the slaves who have been freed, admit of no doubt as sound propositions in themselves. The only question that can be made upon them is the propriety or necessity of incorporating them into the fundamental law. For myself, I think that although these may in a certain sense be said to be matters of a temporary character, still they involve interests of such immense magnitude that it is proper they should be settled in the most solemn and enduring mode, and that their incorporation into the Constitution will save disputes and wrangling hereafter.

Mr. President, it has been said that all these proposed amendments, as a whole, as a general plan for the restoration of these States, will not be acceptable to them, and that they will not adopt them, or at least that they will not do it willingly; and if they adopt them at all it will only be under a kind of coercion and because they cannot otherwise obtain what they seek; and that we have no right to secure even proper amendments in that way.

It seems to me that this plan, as a whole, is characterized by so much moderation and forbearance that it cannot fail to commend itself to the people of these States so that they will readily and freely give it their sanction. But, sir, if it be true that they are not satisfied with it, and will only adopt it to secure their return to share in the national power, I am so well satisfied that this plan contains nothing but what we have the right to insist on, and which justice to the nation requires, that I should feel no hesitation in saying kindly, but firmly, "You must acquiesce in these amendments before we will permit you to take part in the administration of the General Government." There is nothing new in this, either. Did these States accept the amendment abolishing slavery willingly — a much more important matter to them than anything contained in these propositions? Did they declare their ordinances of secession null and void or declare the rebel debt invalid willingly? We know they did not, but only because the President required it of them. Has any one ever blamed the President or thought he was unjust to the South in these requirements? If the people of the nation, through their representatives, believe that something more should justly be required, they have the equal right and should exercise the right to demand it.

We should not exercise our power to make any unjust demand, but what is just and right to exact we should be wanting in our duty if we fail to have done.

Mr. President, it is a matter of great satisfaction to me that at last, after so much and so anxious deliberation, it appears so probable that Congress will be able to present a plan upon which the requisite majorities of both Houses will be able to agree, and especially when as a whole this plan commends itself so well to my own judgment of what is right.

It is known that some differences of opinion have existed between Congress and the Executive on this subject.

Great differences have existed among ourselves; many opinions have had to yield to enable us to agree upon a plan. If we are so fortunate, as I trust we shall be, to pass these propositions by the requisite majorities, although they may not in all respects correspond with the views of the President, I believe he will feel it to be his patriotic duty to acquiesce in the plan proposed, and give his powerful influence and support to procure their adoption. We are all aiming at the same grand result, the difference is rather in the choice of modes and means to attain it. We are all, I trust, actuated by the same high motives of patriotism and all desire to see all these States again acting harmoniously together. In a matter of such grave importance, with no precedents for our action, with no guide in the Constitution but that furnished by its general spirit and purpose, it is not singular that great diversity of ideas should exist. In such case opinions must yield to some extent, or else nothing could be agreed or settled, and all would be anarchy. I will not allow myself to believe that these measures will not, under the circumstances, receive the sincere support of the President, although he may not believe them perfect.

Mr. President, there are men who believe we are now on the verge of ruin, and that we shall never again become a united and harmonious people. But, sir, I believe they are either cowards or croakers, who always see

the dark side of the picture. For myself, I see no such cause of alarm. To me everything looks hopeful for the future. We have just gone through the greatest war the world has ever seen. An unparalleled social revolution has taken place in the South — three or four million people turned from slaves into a free people.

That in so short a time after these great events so much of order and quietness and obedience to law should exist is astonishing. The world never witnessed its parallel. We did not expect it ourselves before the close of the war, but now we are impatient and troubled because it is not better. Time alone will smooth and allay the stormy waves of excitement and passion caused by such momentous events. To me, sir, a great and glorious future is opening for our country. Slavery, the great blight and curse that has hung upon us, is ended forever. The South, so long retarded by it, will be opened and expanded by the influence of free labor and free institutions. A new agriculture will enrich and beautify her fields. Commerce and manufactures will build up busy towns and carry thrift and wealth along her great rivers. All causes of discord between North and South being over, we shall become a homogeneous nation of free men, dwelling together in peace and unity. United and wholly free, our power would awe the world. I hope to live to see the day when all will agree that this great war which has destroyed slavery, severe and burdensome as it was to this generation, was yet one of those "blessings in disguise" sent by the Great Ruler of all which proved the very salvation of the nation.

Mr. STEWART. Mr. President, as I shall vote for the plan agreed upon among my political friends, it is proper that I should make a brief statement of my reasons. While it is not the plan that I would have adopted, as is well known, still it is the best that I can get, and contains many excellent provisions. It repudiates the rebel debt and affirms the sacred obligation of the nation to pay the debt contracted in preservation of the Union. It does not base representation on voters, which I preferred, but it approximates it more nearly than any other plan presented, and recognizes the principle that a white man in the North is entitled to equal representation with a white man in the South. It declares that all men are entitled to life, liberty, and property, and imposes upon the Government the duty of discharging these solemn obligations, but fails to adopt the easy and direct means for the attainment of the results proposed. It refuses the aid of four million people in maintaining the Government of the people. It involves freedmen's bureaus, civil rights bills, test oaths, and exclusion from office, all supported by military power. I would not object to these, for I recognize the obligation of full protection for all men, if there were no cheaper, easier, and better plan for the attainment of this worthy object. But the reasons why I can support this plan are, that it recognizes the obligations, which I hold sacred, and does not preclude Congress from adopting other means by a two-thirds vote, when experience shall have demonstrated, as it certainly will, the necessity for a change of policy. In fact it furnishes a conclusive argument in favor of universal amnesty and impartial suffrage. The longer the North strives to protect the negro and the white loyalists of the South from sure violence at the hands of rebels by military power, supported by grievous taxation, with increasing danger of a consolidated and despotic Government, the more clearly will the necessity appear of returning to first principles, and according the ballot to all men. It is not the first time that the black man's aid has been spurned by this Government and it will not be the first time that necessity has driven us to avail ourselves of his support. While his labor was added to the power of treason traitors were triumphant; when it was subtracted and added to the material resources of the Government the Union forces were victorious. While his political power is ignored or added to disloyalty free government in the South is impossible. When it is withdrawn from rebels and added to the loyal forces the Union and republican institutions will be safe. The utter impossibility of a final solution of the difficulties by the means proposed will cause the North to clamor for suffrage. Test oaths, exclusion from office, and military rule

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will make the South anxious for amnesty, now so lightly considered, and willing to take suffrage to avoid certain and greater evils. While the way is left open, as it is in these resolutions, for both mercy and justice, the logic of events will work out the great problem, and satisfy all who are not now satisfied that the march of this country must either be toward consolidated, arbitrary power, supported by enormous taxation, or toward amnesty and suffrage, union and liberty. If the arguments presented by this plan do not convince at once time will do the work. I will further remark that it is a better plan than I expected could be agreed upon, and I hope much good from it. It may lead to a final settlement, and with that view I shall give it my support.

Mr. HOWE proceeded to address the Senate. Without concluding, he yielded the floor for an executive session. [His speech will be published in full in the Appendix.]

On motion of Mr. HOWARD, the Senate proceeded to the consideration of executive business; and after some time spent in executive session the doors were reopened, and the Senate adjourned.

RECONSTRUCTION.

The Senate, as in Committee of the Whole, resumed the consideration of the joint resolution (H.R. No. 127) proposing an amendment to the Constitution of the United States, the pending question being on the amendment proposed by Mr. DOOLITTLE as a substitute for the second section of the proposed article of constitutional amendment.

Mr. HOWE resumed and concluded the speech commenced yesterday. The entire argument will be published in the Appendix.

Mr. DOOLITTLE. Mr. President, the Senate will bear witness, and I have no doubt my colleague will cheerfully accord the same, that never upon any occasion has a word fallen from me calculated or intended to wound in the slightest degree the good name or good fame of my colleague. I think no such word ever escaped me, and if I know my own heart no such word will ever fall from my lips. But the remark which my colleague made when he concluded his sentence which had reference to me, that in my history I had, politically, been found where office or position brought the highest price is a remark which if not construed with more charitable feelings than most men are capable of exercising, might be supposed to contain some reflection upon the integrity of my purpose in my political action. Sir, I claim no infallibility; I am as liable to mistakes as other men; but what I do claim is that in what I have done in my political life I have intended to do right. I may have erred in not carrying those intentions fully into effect; but, sir, that I ever intended in the slightest degree to swerve in my political action for the sake of offices or the price of offices in the market, is to those who know me a statement wholly without foundation.

Mr. HOWE. My colleague does not mean to say that I have charged him with any such thing.

Mr. DOOLITTLE. My colleague does not assume to charge it, but assumes to say that it looks like it.

Mr. HOWE. No, sir.

Mr. DOOLITTLE. I understood my colleague to say that from my course it would seem that I was the most fortunate of all politicians to be always where the offices could be obtained which commanded the highest price in the market.

Mr. HOWE. No; not even that, though that is very different from what my colleague was replying to. After stating the situation of parties and political affairs at these periods, I did remark, expressly disclaiming any idea of charging him with being untrue to his convictions, that it was a most fortunate coincidence that he had always happened to have the very convictions which at those different periods bore the highest price in the market.

Mr. DOOLITTLE. Mr. President, those words are equivocal. The inference to be drawn is substantially what I said, if not to cast an imputation, to raise a question as to the sincerity of the motives which have controlled me. Now, Mr. President, it is not pleasant for a man to speak of himself; it is not becoming on ordinary occasions that a man should speak of himself or for himself; but, sir, upon a point like this, I may be pardoned if I allude to other crises in my life in which I have been called upon to take important and decisive action in relation to my political course.

And first, sir, I refer to 1847. In the convention of the Democratic party of the State of New York, when we were in possession by force of arms of the territories of Mexico, and the question of their disposition was to be determined, after Mr. Polk, then President, had recommended the disposition of those territories in such a manner as to give to slavery a considerable portion of them — under these circumstances, and when the responsibility was upon the country, I, as a member of the dominant party of the country, (a party which had the Executive, which had both branches of Congress, which was in a large majority in almost all of the States,) had occasion upon my responsibility to take action upon the pending question raised by the situation of affairs; and that question was the same question which for twenty years has been the great issue, shall slavery be extended into the Territories of the United States or not? As a member of the convention of the dominant party in the State of New York I brought forward that resolution denominated the "corner-stone resolution," upon which we separated ourselves from the majority and the dominant party in the State, and organized what was denominated the Free-soil party of the State of New York. That cornerstone resolution stood at the head of the leading newspapers of New York and New England and Ohio, and Wisconsin, too, as the corner-stone upon which the Free-soil organization was laid.

Sir, for no purpose but to carry out what I believed to be the duty resting upon me and carrying forward the true interests of the country, we deliberately went into a great minority, abandoned the majority and office and all chance for office, all place and all thought of place, abandoned all to give ourselves to the principle which was

involved in the struggle. What followed? The Democratic party was overthrown; General Cass, its candidate, who was in favor of what was called the diffusion of the institution of slavery by way of absorbing it and blotting it out, was laid aside, and General Taylor was elected. What then intervened? One of those things which seem almost, as we look back upon it now, as the special providence of Almighty God. The discovery of the gold mines of California happening just at this time carried the people of the free States by hundreds and thousands into that new Territory just acquired from Mexico; and they organized a free State government with a free constitution, came to Congress and demanded admission, and Congress dared not refuse, for California was the golden State, and a rising State on the west side of the Rocky mountains, and she could not be held against her will. She demanded admission; and the Senate of the United States, pro-slavery as it was, was compelled to yield to the demand, and California was admitted as a free State. That was the result of the organization of the Free-soil party of 1847 and 1848. It was a victory for freedom by the admission of that free State which gave in this Senate a majority to the free States of the Union.

What then occurred? There was got up what was called a grand compromise. All the great Whigs and all the great Democrats of the country in this body and in the other House got together and produced what was called the compromise of 1850, and then it was proclaimed by the great, men of the country, "The slavery question is now forever ended; it shall never be agitated again; now the country shall be quieted; we shall hear no more upon that subject." The two parties went into the nomination of their candidates in 1852 upon precisely the same platform in that respect. The Whig party nominated General Scott, and they declared there should be no discussion of the slavery question at all countenanced or encouraged. The Democratic party nominated General Pierce, and they declared the same thing, so that upon this question in 1852—the time when my colleague charges upon me that I abandoned the cause which I had espoused in 1848 because he says I gave my support to General Pierce in 1852—both the great parties of the country occupied the same ground. It is a fact to be noticed also that the great majority of the Free-soil party with which I acted in 1848, in the State of New York, as well as in Ohio and Wisconsin, went into the support of General Pierce in 1852. There was only a little, small remnant of that party who voted for Hale, who was in 1852 the candidate of what was called the Liberty party. There were a few who did so. The honorable Senator who now occupies the chair [Mr. POMEROY] was one who adhered to Mr. Hale, and I believe the honorable Senator from Massachusetts [Mr. SUMNER] also adhered to Mr. Hale in 1832; but there were very few of the Free-soil organization either in Ohio or in New York or in Wisconsin who did.

Here was no abandonment of principle on my part. It is true I went upon the bench in 1853, having been elected in 1852, in the State of Wisconsin. From 1853 to 1856 I was constantly engaged in the arduous duties of judge of the first judicial district of Wisconsin, which at that time was the most populous and had the most business of any of the judicial districts of the State; and while I was on the bench I had sufficient regard to what I thought were the proprieties of that position not to engage publicly in political affairs; but from the moment the Democratic party, which had elected General Pierce on the pledge that the slavery question should not be reopened, proposed the repeal of the Missouri compromise, to every person who conversed with me on the subject I freely, openly, frankly declared in opposition to the project, and said that it would be the dissolution and the destruction of the Democratic party.

My colleague refers to the fact that in 1856 I gave my open adhesion and my public support to the election of Mr. Fremont, but says that I did not write a public letter or make a public speech until after the adjournment of Congress. You remember, sir—and I know you do, for you were a resident of Kansas at the time—that for long months here in Congress the very question pending was whether Congress would enforce the border-ruffian slave code of Kansas, or would repeal it. If Congress had repealed it, Kansas would have been a free State. I did not desire to go into political life or to go into a struggle. I was engaged in my profession, a profession that brings more profit and much more ease than any place like those we occupy here. I had no desire to go into it; but when the Congress of the United States, under the influence of the Senate of that day, determined that they could enforce that bloody code upon the Territory of Kansas, I could not withhold my declaration. Sir, it was like fire in my bones and in my heart. It demanded and would have utterance; and when the utterance came it came red hot in the denunciation of the infernal outrage that was thus practiced upon the people of that Territory; and as my colleague says—it would not be becoming in me to say it—the people of Wisconsin perhaps did feel grateful for what I did in the canvass of 1856 in denouncing the Democratic party and overthrowing it and trampling the organization under our feet which would justify and sustain an outrage like that.

Mr. President, I never sought alliance with the Republican party because it had offices whose price was high in the market—no, sir; never. My colleague refers to my course in Wisconsin. Sir, during the last six months, ay, more than six months past, in the State of Wisconsin no man has struggled harder than I have struggled to save

the Union party, to save it to its platform, to save it to its principles, to save it in its supremacy. There is hardly a man in Wisconsin this day who does not know that the success of the Union party there is due to those men who in the convention at Madison united with me and agreed with me in opinion there and in resisting what was there proposed, to wit, to declare by the resolutions of the Union convention that the States of the South should never have representatives in Congress until they extended universal suffrage to negroes. Because we resisted that in the State of Wisconsin we saved the Union party and elected its candidates by nine thousand majority when the very proposition presented to the people based upon negro suffrage was voted down by nine thousand. Had we, consulting the public newspapers, consulting the denunciations and the clamor of the hour, been false to our position and false to the crisis, had we yielded to that clamor, the Union party would have been utterly overwhelmed in the State of Wisconsin at the last election.

Mr. President, it has been charged that it was through my instrumentality that that convention refused to adopt any such new creed or new platform which never had been incorporated as a part of the Union creed or the Union platform. I have been charged with the responsibility of that. If the responsibility of that rests upon me, then it is true that I had the honor of saving the Union party of Wisconsin in its struggle last fall. But has the course pursued by me there saved me from the denunciations of the public press? Not at all. For six months, from one end of Wisconsin to the other, ay, from Boston to St. Paul, by every one of a certain class of newspapers I have been denounced as a traitor to the Union party because I saved it from defeat. Sir, it is not the first time in the history of the world that men have turned in to crucify their saviour. So far as I am concerned, my political life may be ended; but the principles for which I have contended, the principles for which I have made the struggle, will live. Men may suppose that those principles are crucified; they may imagine that the doctrine of the right of the States to control their own institutions, so far, at least, as to be permitted to declare who shall exercise the right of suffrage within their limits, is crucified and buried in the tomb, with a stone rolled at the door; they may imagine that these principles are dead and buried and will never rise again. So far as individuals are concerned, it is of but little consequence. I, as an individual, may have met denunciation; perhaps I may be consigned to defeat; but what of all that? What care I, if the principles live? I tell you, Mr. President, and it is as certain as that the sun will rise tomorrow, that the great principles for which I have contended will live; their resur-

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rection is certain; and those who stand in opposition to them will find that they are living, vitalizing principles; that they will have recognition, and you cannot keep them buried out of sight.

Mr. President, I have been betrayed, perhaps, into saying more than I would have said under other circumstances. I have no unkind words to my colleague, no questions upon the sincerity of his course, no imputations upon his motives. I only rose to say, in my own defense, that so far as my intentions are concerned, I intend to pursue the right, if I know where it leads; and, God helping me, I will pursue it to the end, be the consequences what they may.

Mr. DAVIS. Mr. President, the pending question before the Senate is, I believe, the amendment proposed by the Senator from Wisconsin, [Mr. Doolittle.] If it be the pleasure of the Senate, I should like to have the vote taken on that proposition now, so that I may have the opportunity of offering two or three amendments myself.

The PRESIDING OFFICER, (Mr. Pomeroy in the chair.) The question before the Senate is on the amendment of the Senator from Wisconsin to the second section, upon which the yeas and nays have been ordered.

Several Senators. Let it be read.

The SECRETARY. The amendment is to strike out the second section of the proposed article, and in lieu of it to insert the following:

After the census to be taken in the year 1870, and each succeeding census, Representatives shall be apportioned among the several States which may be included within this Union according to the number in each State of male electors over twenty-one years of age qualified by the laws thereof to choose members of the most numerous branch of its Legislature; and direct taxes shall be apportioned among the several States according to the value of the real and personal taxable property situate in each State not belonging to the State or to the United States.

Mr. TRUMBULL. I would inquire if we did not vote on that direct proposition once before.

Mr. DOOLITTLE. No, sir.

Mr. CLARK. It was submitted, but not voted upon.

The PRESIDING OFFICER. The vote has not been taken. The yeas and nays have been ordered.

Mr. HOWARD. I hope the vote will be taken.

The question being; taken by yeas and nays, resulted—yeas 7, nays 31; as follows:

YEAS—Messrs. Cowan, Davis, Doolittle, Guthrie, Hendricks, Johnson, and Riddle—7.

NAYS—Messrs. Anthony, Chandler, Clark, Conness, Cumin, Edmunds, Fessenden, Foster, Grimes, Harris, Howard, Howe, Kirkwood, Lane of Indiana, Morgan, Morrill, Norton, Nye, Poland, Pomeroy, Ramsey, Sherman, Sprague, Stewart, Sumner, Trumbull, Van Winkle, Wade, Williams, Wilson, and Yates—31.

ABSENT—Messrs. Brown, Buckalew, Creswell, Dixon, Henderson, Lane of Kansas, McDougall, Nesmith, Saulsbury, Willey, and Wrigh —11.

So the amendment was rejected.

Mr. DOOLITTLE. By the courtesy of the Senator from Kentucky I desire to offer another amendment. It is not the same as the last; it differs in this respect, that it bases representation upon male citizens who are voters, and not on male electors simply. I do not suppose it will give rise to any discussion. I merely offer the amendment, and ask for the sense of the Senate by yeas and nays.

The yeas and nays were ordered.

The Secretary read the proposed amendment, which was to strike out section two and in lieu thereof insert the following:

Representatives shall be apportioned among the several States which may be included within this Union according to the number in each State of male citizens of the United States over twenty-one years of age qualified by the laws of such State to choose members of the most numerous branch of its Legislature, and including such citizens as are disqualified by participating in rebellion. Direct taxes shall be apportioned among the several States according to the value of the real and personal taxable property situate in each State not belonging to the state or to the United States.

Mr. HENDRICKS. I voted for the amendment proposed by the Senator from Wisconsin, not that I believe that representation in this country ought to be based upon the voting population, but I voted for it as I thought it better than the proposition that is before the Senate from the committee. I think representation ought to be based upon population, and that taxation ought to rest upon the property of the country *ad valorem*; and now that this question has been raised in this country, I believe it will yet come to that before the question is finally settled.

Mr. SHERMAN. I shall detain the Senate but for a moment to explain the reasons for the vote I shall give in opposition to what is my own deliberate judgment on the question now pending. The more I think of this question the more I am convinced that the true basis of representation in the present condition of affairs is the number of male citizens who under the laws of the States are allowed to vote. This proposition, it seems to me, is a simple one, plain and obvious, which puts a citizen in one State on a footing of precise equality with a citizen in every other State, which equalizes the political power of all citizens, and which will destroy all sectional animosity. If this amendment be adopted, a citizen of the State of Ohio has precisely the same political power with a citizen of the State of Massachusetts or of South Carolina, no more and no less. The same number would be required in each State to elect a member of Congress. The number of citizens could be easily ascertained by the census, and the census rolls could be attested very readily at each annual election. This proposition is simple, plain, and obvious; and yet under the necessity in which we are now placed I shall feel called upon to vote against it. My reason for this I will briefly state. In my judgment some change ought to be made in the basis of representation. The condition of the negro population in the southern States, now deprived of all political power, is such that to give to the white people of those States the right to vote for the negro population and represent them is to give them an undue advantage, one which we could not justify even if they had not been in rebellion.

There is no reason why the white citizens of South Carolina should vote the political power of a class of people whom they say are entirely unfit to vote for themselves. If there is any portion of the people of this country who are unfit to vote for themselves, their neighbors ought not to vote for them. The plain and obvious principle of representation is that every voter should vote for himself, and for no one else; those who have not the right to vote should be represented by the majority of the voting population, and not by their immediate neighbors. There is no reason, for instance, why because the State of Massachusetts has a preponderance of women a voter in Massachusetts should count more than a voter somewhere else. There is no reason why, because in the city of New York there is a very large element of unnaturalized foreigners, a voter in the city of New York should have more political power than a voter anywhere else. There is no reason why, because a white man lives in the South, where they have a large mass of negro population, a white man in the South should have more political power than a white man in Ohio. There is no reason why, because in Ohio we have a greater proportion of voters to our population than they have in other States, we should be deprived of political power. The truth is that every man who has the right to vote should be counted one, and the aggregate of votes should then be divided by the proper

number of Representatives in the political body — the House of Representatives — in order to arrive at a true and correct apportionment.

That is a plain and obvious principle, and if that principle was adopted the southern States would feel no local jealousy. They could not feel any. No State and no community would have the right to complain. The laws of the United States would fix the naturalization of the foreigner; birth would fix the citizenship of the native; there could be no controversy. Then every citizen would stand equal before the law, with precisely the same political power, no more and no less. I say, therefore, that this is the only amendment to the propositions now submitted to us that I desire to make; but I feel bound by the action of my political friends to vote against this amendment. I place my vote distinctly on this ground: here are propositions upon the details of which men would naturally differ, and it was therefore necessary for those who intended to support the mass of the propositions to confer together and agree upon those which they could support. There must be at some point of every controversy of this kind some surrender of individual opinion.

Although my opinion is as clear as it can be upon any subject that this amendment is right in itself, both branches of it, yet as we were compelled to unite on some measure — and we must all yield some of our opinions upon various questions involved — there are five sections in this proposed article — I feel bound to vote against this amendment offered by the Senator from Wisconsin, though in my judgment it would do more than any other to heal the difficulties by which we are surrounded. A majority of those who will support the propositions on which we are to stand believe that the measure in the shape in which it is before us is the wisest, and I am bound on that question to defer my own opinion to that majority who differ from me in order to secure the passage of this resolution. I am the more reconciled to this course because next to the proposition now submitted I think the present is the best that has ever been offered. Next to the simple, plain proposition of basing representation upon voters, the section before us is the best. It does recognize the equity of the rule I have mentioned. It bases representation upon population, and it excludes representation for a class of people that have no political power; but it stops short of the logical sequence of the principle. It endeavors to save representation for certain portions of our country where they have a population whom they deprive of the right to vote; but it deprives the South of representation for a population which has no right to vote. It is therefore to some extent unjust, and yet it is more just than any other proposition which has been submitted to us. For instance, the proposition which I voted for some two or three months ago, reported by the committee on reconstruction, proposed that if the South excluded any portion of the negro population from voting the effect should be to exclude the whole mass of that population from representation. This proposition is better than that. It is indeed better than any other except the simple, logical proposition of basing representation upon voters.

While I do not and cannot surrender my individual opinion on this subject, I shall vote against the amendment of the Senator from Wisconsin simply because it is necessary to have an end to this controversy, and those who are expected to carry these propositions before the people must agree upon some platform, and I choose to stand by that which has been agreed upon by those who are expected to vote for some amendments to the Constitution. All those who believe that amendments ought to be adopted must confer among themselves and get the best proposition upon which they can agree, and then they must abide by it and stand by it. Although my friend from Indiana [Mr. HENDRICKS] may say that that is the result of a caucus, let me tell him that he has submitted to such a result a hundred times, and would do it again. I would always rather submit to the deliberate judgment of a majority of those with whom I act than to seek the aid of my political opponents, uniting with a minority of my friends to make a platform that nobody would be satisfied with.

Mr. WILSON. After the remarks made by the Senator from Ohio I desire to say simply that I regard this amendment as a proposition to strike from the basis of representation two million one hundred thousand unnaturalized

foreigners in the old free States, for whom we are now entitled to seventeen Representatives in the other House, and it weakens that part of the country that much. That is all there is in it. It is simply a blow which strikes the two million one hundred thousand unnaturalized foreigners who are now counted in the basis of representation from that basis, and takes the Representatives for that population from the loyal portion of the country for the benefit of the other end of the country that has been disloyal. That is the proposition, and I shall vote against it.

Mr. SHERMAN. I think that a remark only is necessary in reply to that. The two million of unnaturalized foreign population alluded to by the Senator is somewhat an over-estimate. But take it at two millions; how long are they excluded? Only during a short period of probation — five years; and in most of the States the great body

of them are promptly admitted to citizenship.

Mr. President, I ask you whether it is not just that those people who are denied political power should be excluded from the basis of representation. If it is right to exclude four million blacks in the southern States who are denied representation, is it not also right to exclude all other classes in every other State who are denied political power? We cannot go before the people of the United States and argue the question as it affects this State or that State, this community or that community. The amendment to the Constitution which we propose we must settle upon some fundamental principle — not judge by the way it will operate upon this community or that community, but as it operates on the whole mass of the community at large.

Now, I say that it is not unjust to exclude the communities in which two million foreigners in the process of naturalization live from exercising political power for them. As soon as our laws allow them to exercise political power for themselves they will become citizens, and they will vote; but the very same reason which excludes the four million colored population in the southern States who are denied by their laws all political power would exclude temporarily, during the short period of probation, the foreign population who are unnaturalized. But it must be remembered by my friend from Massachusetts that the great body of unnaturalized foreigners are women and children. Nearly all the men who come to this country are naturalized in five years. The exceptions are very rare. In an agricultural community like the West all foreigners are naturalized in a short period of time, except in some States where the policy of their laws is to prevent them from being naturalized by allowing them to vote without being naturalized. The most of the unnaturalized people in this country are women and children. Nearly all the men who have lived here five years have votes. The objection the Senator now makes, that two million foreigners would be unrepresented, disappears in 1870, because by that time all who have been in this country during the requisite period would undoubtedly be naturalized, and they would then be counted.

Mr. GRIMES. Others take their places.

Mr. SHERMAN. They are coming in. But ought they to be counted until we intrust them with political power? The Senator from Massachusetts has no more right to vote for a foreigner whom the laws of the United States declare to be unfit to vote for himself than I have, merely because he lives in Massachusetts. It seems to me that is not a fair argument.

Another argument has been often drawn into this discussion. I do not know that it is worth while for me to continue the discussion, because as I feel bound by the action of my friends I shall vote against this amendment. But there is another argument. It is said that the young and active men of all the eastern States, including Ohio, which now sends more abroad than it receives, emigrate westward, leaving their families behind them, and that it is unjust to deprive those families of political representation. So it would be taking a superficial view, but you must remember that these young men who go West themselves represent their families, and that they bring the principles in which they were taught back into this body and into the other House. They exercise political power for their families when they go to the West. The West gives these emigrants office, honor, position. Should not the West count for that? When a young man goes from Massachusetts to Minnesota, ought not Minnesota to have the benefit of his political power in her count of representation, when she gives him office and honor and power and patronage? Undoubtedly. Wherever the man votes there he ought to be counted; and if he leaves behind those who do not vote they ought not to be counted. He ought to be counted where he exercises his political power, so that a man in one State may be the same in every State, having the same political power. But I will not discuss this matter farther.

Mr. COWAN. Mr. President, I have a word to say. I am not exactly in the category of my honorable friend from Ohio. I do not wear the harness of caucus on this occasion, or indeed upon any other. I am opposed to any alteration of the Constitution in this point, because to me that is vital. But I am going to vote for the proposition of the Senator from Wisconsin because I think it better than the original proposition and not worse.

It does seem to me there are most extraordinary notions of political power here, what constitutes it, where it is vested, and how it is wielded. What conceivable difference can it make to a citizen of Pennsylvania as to how Ohio distributes her political power? What conceivable interest has the honorable Senator from Ohio; or a Senator from any other State, to say to us whom we shall allow to vote and whom we shall not allow? They do not pretend that they have a right to say to us whom we shall elect and whom we shall not elect; and is not the elector just as much the choice of the community as an officer is the choice of it, except that the electors are chosen by a class and described by a general designation, whereas the officer is chosen by name to perform certain functions?

Mr. President, to touch, to venture upon that ground is to revolutionize the whole frame and texture of the system of our Government; to turn it over: to violate our own canons. What is the guarantee of the United States to the several States? It is that they shall have a republican form of government. Now we are told that a republican

form of government is this, that, and the other. One man says it is "universal suffrage;" another man says it is "universal manhood suffrage," so as to throw out the ladies; another say's it is "universal white suffrage" and so on. Who can agree as to what a republican form of government is? If gentlemen had read the original text and the approved commentaries thereon they would have found that the guarantee was such a form of government as the State itself should make. The State is the judge of the republican form of government, and not the citizens of the other States.

Then, if a State has the right to form its own government, and that is the republican form, by what right can one of the other States, or two of them, or ten of them, or three fourths of them, if you please, venture to introduce into the State a power from without in order to control its distribution of political power? If the effect of any such extra action upon a State would be to deprive it of a portion of its weight in the Union, that is a violation of the original compact; it is a violation of the very instrument upon which the Union was formed; it is putting the torch to the very fabric you wish to preserve; it is putting a mine under the very building you wish to secure. Are you to preserve these States if you are to regulate the weight hereafter that they are to have in the Union? Can half a dozen or a dozen or two dozen of these States undertake to shear of their political power the other States? Can you violate your own guarantee? When you say that nobody else shall deprive these States of the right of making their own government and distributing their own power as they please, can you do it? Can the guarantor himself with impunity violate his own guarantee?

Mr. President, I had intended to make some more extended remarks on this topic; and as I am on the floor now I may just as well say at this time what I have to say on the general subject. It is perfectly clear, I should think, to all wise people that the basis of representation, or the measure of political power and that which adjusts it among the States, should be something fixed, certain, determined. You cannot make a flexible standard. You cannot make a standard that is thirty-three inches to-day and thirty-six to-morrow, and the next day forty. You cannot allow a State to open and shut her valves and admit power or expel it at will. You propose to say that if she does not do certain things she shall not have but a certain amount of power. Suppose she wants power. She is made the arbiter of the power she shall have in the Union. Suppose she chooses to exclude it again, what then? Here we have a constantly shifting panorama upon which I do not see how it is possible that an apportionment bill can be framed. Population, however, is certain, fixed, determinate, a thing to be counted every ten years. and a thing to be encouraged, because if you make population the basis of representation then you encourage population; but if you make voting the basis, or if you make that the measure, then you encourage the degradation of the franchise. I am willing, on the part of my own State, that she shall be the guardian of the franchise within her limits. The people of our State are to be the judges of the persons in our society who are fit and proper to cast our ballots; and we are perfectly willing that all other States shall enjoy that privilege, because we believe that it is an inherent and essential privilege in every State.

But what will be the result upon us of the proposition before the Senate? We have in Pennsylvania about one hundred thousand negroes, and we have a Representative in Congress based upon them. What is to be the operation of this amendment? Just this: your whip is held over Pennsylvania, and you say to her that, she must either allow her negroes to vote or have one member of Congress less. That is it; and it comes with very bad grace from a parcel of people who have no negroes among them; and that I think is the worst feature in all this business from one end of it, to the other. Here are a parcel of States who have no negro population, and they are exceedingly anxious that the people who have then should let them vote. What is that their business? We have never known that they invited them that they might get votes. The negro is now as free to go to Massachusetts or to any State where he is allowed to vote as he is to stay in Pennsylvania or anywhere else. If he insists upon this privilege, he has the same right to go after it that I have, or any other man has, and he can go and get it. if I do not like the laws of Pennsylvania and they do not suit me, and I have not power and influence enough in the State to mold them to suit my particular desire, I can go to another State and another until I suit myself. But why people who are not interested in this thing, who have everything to gain and nothing to lose by it, can expect to maintain the Union by insisting upon propositions of this kind I confess is more than I can see.

This is not common justice in a common, ordinary transaction; and I do not know whether it would be considered fair even in a horse trade. The advantage is all on one side. It is like the Indian and the white man dividing the possum and the turkey. The white man said to the Indian, "Now you take the possum and I take the turkey, or if you do not like that, I will take the turkey and you take the possum." [Laughter.] "Why," said the Indian,

you have not said turkey to me once;" and that is the way with this constitutional amendment. The States that have no negroes are to shear the States that have negroes of the political power they have according to the fundamental law, according to the ancient bargain made, and according to which the Union exists, and which is in fact itself the Union; that bargain which is bathed in the blood of two hundred thousand American soldiers, for which we have sacrificed six or eight thousand million dollars; that bargain now is to be amended in its essentials, and to be amended for the benefit of one section of the Union who have everything to gain by it and nothing to lose, and to the prejudice of the residue.

Mr. President, will the man who knows the value of this Union to these States, the man who loves it, who reveres it, and who believes that it will make his country the greatest republic on earth — will he be guilty of unfairness? And, sir, what is worse about it all, those States which are to suffer most, and the States within which it is to operate most hardly, are not heard; they are not allowed to come upon this floor and argue their case although this is a free country with a representative form of government, and, as I supposed, a republican form.

Mr. President, I consider this attempt as dangerous to the peace of the Union as the original doctrine of secession. Do gentlemen suppose that the people of the States affected will submit to this? Let me remind gentlemen of another thing. The Republican party existed over half the Union. It existed as a party north of Mason and Dixon's line. It was a minority party. When Mr. Lincoln was elected in 1860 there was a majority on the popular vote of more than nine hundred and thirty thousand against him. He was elected under the forms of the Constitution, and was really and lawfully the President of the United States; but under the workings of the Constitution it did so happen that there was that majority against him. In the States north of Mason and Dixon's line the majority for Mr. Lincoln, at the last presidential election, was about four hundred thousand, I believe. At any rate, nobody can deny but that very nearly one half of the people of the North belong to the Democratic party. There, too, I suppose, you may consider that the people of the South now belong, because your destinies are in their hands. They will inevitably sit in judgment upon you here in this Chamber. They will mete out to you, if you are not careful, the same measure you try to mete out to them. Now, I warn my fellow-Senators that we cannot afford this with this form of government of ours. Had we not better stand upon the Constitution as it is, where our fathers put it, that Constitution which we enforced at such cost? Think of partners after a difficulty, one partner trying to compel, and to compel under threats, the insertion of a new clause into the original articles of partnership. But can we compel it; and if we cannot compel it, what then? You know what it cost us to compel obedience to the Constitution as it is. You cannot compel obedience to the Constitution as it is not. You could compel obedience to a Constitution that was the law of the land, but you cannot compel obedience to a Constitution that is not the law of the land.

Mr. President, I am for dealing fairly. In the first place, as I have said before on this floor, I trust the American people everywhere. Why? I trust them because they are the foundation upon which this structure is built; and to say that they are to be punished into the proper shape or driven into the proper shape is to say that the whole rests upon a quicksand, rests upon a foundation which is distrusted, which begins to show cracks in the walls already if these things be true. I trust the people. I trust the people North. I trust the people South. I trust the people of all parties. Why not? Why is it that the South will sustain the Union now? Because it is her interest to sustain it. Why is it that we sustain it? Is it because we arrogate to ourselves superior virtue? Has the grace of God been more liberally bestowed upon us than on our brethren? Is that the pretense? We may be wiser, but surely I think nobody can say of the people or any part of the people that we are more honest.

Trusting the people, then, the people must be trusted everywhere, and what we do especially must be fair. It is a characteristic of our race, and one which has marked it for long ages, that there must be fair play. No man of our race will interfere even in his brother's quarrel in a fair contest. We must play fair. What have we been playing for? We have been playing for the Union and for the Constitution. What is the attempt now after we have won? It is to say that we will have neither except upon terms. Terms with whom? Terms with the very men we have been struggling with for years in order to compel them to assent to our terms — the Constitution and the Union.

I say again that we must be fair; we must allow to the States the rights which they reserved to themselves when they made this compact, and especially must we allow to them the essential rights, the rights that underlie the whole fabric, that are the basis of the whole structure, the first of which is the right to regulate their own domestic concerns. Have we forgotten our own platform? Let gentlemen who talk about party fidelity recur to the platform of Chicago in 1860; recur, if you please, to your Baltimore platform of 1864; and then you will see who are faithful to the original doctrines of the party and who are not. Shall we undertake now to say that we will regulate the ballot all over the United States, remodel the whole affair, redistribute the political power, and we do

this right in the face of our own law? Who passed the act of the 4th of March, 1862? Who voted for it in this Chamber and in the other? Nobody gainsaid it; nobody thought of gainsaying it. And yet that law in force today is violated, trampled under foot and disregarded. By whom? By us. We who fought for the Constitution and for the law; we who proclaimed ourselves those who would see it enforced at all hazards violate it; we, in the face of our own law, today refuse to hear the people we are legislating for upon our floors. That law gives to the southern States, eleven of them, I believe fifty-eight members, and they have not one, and you have not the poor apology that is stuck into this amendment to the Constitution here, that these members engaged in rebellion, because the fact is that a great many of them did not; a great many of them engaged to suppress it; some of them shed their blood in that attempt, and some of them struggled through all manner of difficulties to be true and faithful, and yet they are excluded; they are not allowed to say a word here for their fellow-citizens. And this is fair! This is the way to deal with a partner! This the way to deal with men with whom you expect to live in peace and unity coming centuries! What is it all about? Where is the difficulty about it? Are they stronger than you? Are you afraid in the other House, with one hundred and eighty-three members now, that you cannot manage fifty-eight? Are we afraid here with fifty Senators that we cannot manage twenty-two ?

Mr. President, the disguise which covers this proposition is too transparent. As I said before, the Republican party was a minority party. Its policy immediately upon attaining to power was to make itself a national party was to throw out its lines and set its stakes in every quarter of the Union. Let it penetrate every hamlet from Maine to Georgia, from North Carolina to California. Let a network of both parties ramify everywhere, spread over the country, and then you may have a Union; and I may remark that the binding efficacy, the cement of the two parties interwoven like a network over the whole country, will contribute a hundred times more to keep it together than any other device, or even the Constitution itself. When this was violated, what was the consequence? When there ceased to be two parties all over the country, all over the length and breadth of it, what had you then? Rebellion; and rebellion will follow it inevitably, not only now, but in all time to come. Strike a line north of Pennsylvania and elect a President against the will of everybody north of the north line of Pennsylvania; or, in other words, go into an election and beat every man north of that line, and a rebellion is inevitable. You have the same difficulty then that we encountered in 1860. The election of Mr. Lincoln beat every man south of Mason and Dixon's line, or very nearly so. All parties and all factions were opposed to him. All had pledged themselves against him, and after the campaign waxed hot and the blood boiled, they had pledged themselves to resist; they were bound before the crisis came, and how could they prevent it? Thousands no doubt regretted it, but their lips were sealed. Thousands were unwilling to act, but still, under the influence of this mortification, they did act. It is a mortification, you observe, that reaches everybody; it reaches men, women, and children; it goes everywhere, and however trifling it may appear to a wise man and a cool man, yet it affects the people, and affects them in a most tender and vital point, and they resent it. They did resent it. I say again, that if under the same circumstances a candidate was to be elected who would beat all New England and New York, they would not submit, in my judgment.

Then I say it was the business of the Republican party to extend itself upon some common platform, not the platform of fairness exactly in the distribution of political power, because the Constitution was not based upon fairness in that respect. There was nothing fair in the provision that Rhode Island and Delaware should each have two Senators, and Pennsylvania and New York each only two. It was not built upon the principle of equality originally. Still we ought to stand upon it and maintain it; and in order to do that there should have been no going away from the original doctrine. We should have stood upon it and strictly and literally enforced it, and we should have had a right to enforce it, and could have enforced it in the face of the civilized world and had the civilized world with us. But that opportunity was neglected; the Republican party did not do that; and then it was driven to the miserable shift of either taking, to itself as allies the negroes of the South, or what? Depriving the South of the political power which she enjoyed by virtue of the negroes. Do you think the world does not understand this? Do you think the people do not understand why this is? Do you think you can delude the people with the idea that this is honest on our part; that it is fair on our part, and that that is what we really mean? I tell gentlemen that if they think so they are mistaken. The people understand this exactly. Do you believe the people want, the mass of the Republican party want, such allies as those in the South? Do you believe they want to rely upon the aid they can get from negro suffrage in the South to hold the balance of power in this Republic? Go to Pennsylvania, go to Illinois, and ask them. When Pennsylvania, with her hundred thousand negroes, refuses them suffrage, why is it? And if she refuses to allow you to intermeddle with it, why is it? Do you pretend that you are improving the suffrage, do you pretend that you are making the institutions of the country more secure when you insist upon this? Who does so in the face of the civilized world? Are you bringing into the councils of the country more

wisdom, more independence, more virtue? Nobody pretends it. Do you allow negroes to vote yourselves? You allow it partially in New York — a kind of emasculated suffrage there; you allow it partially in Massachusetts; absolutely nowhere; and yet you stand here and crack your whip over the head of the southern States who have millions of negroes in them, and you say they must let theirs vote when you will not let yours.

Mr. WILSON. They have the right of voting, absolutely, in Massachusetts..

Mr. COWAN. "Absolutely" if they can read the Constitution.

Mr. WILSON. The same as white men.

Mr. COWAN. Then it is not absolute even for a white man. That is the liberality of the reformers of the present age. After all this talk of political power and how it ought to be divided among men, how every man great and small, wise and foolish, should have his share of it, a poor devil who cannot write has none at all in Massachusetts. The honorable Senator from Ohio ought to have been reminded of that.

Mr. ANTHONY. Colored men vote in our State on the same terms with white people.

Mr. COWAN. Exactly. You put your restraints not only upon negroes but upon whites; but where is the restraint to be put on the people down South? You do not put any limitation there. You do not say to them, "If you let the literary negroes vote you may have all represented."

Mr. MORRILL. Suffrage is absolute in my State — unlimited I may say.

Mr. COWAN. I congratulate the honorable Senator upon it; and now all I wish is that he would go down to the Freedmen's Bureau — I believe the transportation is free — and ship up a hundred thousand negroes to Maine; take a hundred thousand of them there; I have no doubt they would be well treated. Then these philanthropic people would have an opportunity to exercise their skill. They would have an opportunity there to educate them and develop them, and they would see after awhile exactly what they could get out of them. If that were done, I could understand the philosophy of a movement like this. I believe I should agree to almost any new proposition if sufficient evidence was given to me that the people who urged it were honest in their designs, and had not some covert advantage which they expected lurking behind it. If Massachusetts had as many negroes as South Carolina, I could well understand her advocacy of this as being from the purest motives; but when I find her saying, "You take the possum and I will take the turkey, or I will take the turkey and you take the possum," I do not understand that kind of talk to be fair.

And, Mr. President, I am opposed on principle to meddling with this matter. I am opposed to it again on the ground that to me it looks to be unjust, unfair, taking an unfair advantage of people at an improper time. Is this a time to amend the Constitution? I ask honorable Senators if in their opinion this is a time when the Constitution can be amended well and properly, because, as I understand it, if we are to amend the Constitution we must amend it in such a way as to be satisfactory to the people everywhere, not merely the people of Massachusetts or the people of Michigan, but to the people of Georgia and the people of Louisiana, to the people of all the States. Does any man want an amendment to the Constitution forced through here under circumstances of this kind, against people who are unable to resist, against people whom you will not hear, and in the face of a numerical majority in the country against you? Do you suppose that is going to be beneficial? I ask in all sober earnestness, is there anybody who supposes that that will be for the benefit of the country?

Again, suppose you pass this amendment to the Constitution, and suppose the southern States either for the purpose of getting themselves into line with you or for the purpose of increasing their political power under it, should admit the negro to the franchise, will your children and your homes and your governments be the more secure for that? What is the difficulty under which you labor today? Is it that you have not voters enough? Is it that the food upon which the demagogue fattens has grown scarce and he has grown thin? Or is it the reverse? Is it not because demagoguism is rife everywhere; and is not demagoguism rife just in proportion as you furnish it the material upon which to work? Degrade your franchise, put it down in the hands of men who have no intelligence, no virtue, and, what is worst of all, no independence — put it into the hands of men who have nothing to hope from it except in so far as they can use it for corrupt purposes, and shall we be safer then, I ask? Do you suppose that the people of the States in which there are negroes will send you more intelligent, more learned, more virtuous, and more independent Senators and Representatives here if you make this change than they would without?

Mr. WILSON. They will send more loyal men.

Mr. COWAN. "Loyal." What is "loyal?" I ask Massachusetts what is "loyal?" What is the meaning of the word? A fellow that votes with you! That is like the chap defining "orthodox" — "orthodox is the way I believe;

heterodox is the way the other man believes." "Loyal" means an abolitionist, I suppose. At least I find that everybody who does not happen to be an abolitionist or tarred with that stick, is said to be disloyal. Loyalty, Mr. President, is a very simple word. Loyalty means obedience to the laws. It means legality. *Legalis* meant law as well as *lex* meant it. When a man alleges his loyalty to me, let me see his reverence for the Constitution and the laws. Show me a man who disregards either; show me a man who does not believe in the Constitution which brought this country to such a pitch of prosperity for seventy-five years and made us so great and so happy a people; show me a man that lays sacrilegious hands upon that instrument, especially when I know that half the time he does not understand it and that he never read a commentary upon it in his life; show me that man, and I show you one who is not loyal. Show me a man who for a temporary advantage, either for himself or his party, would set a foot upon one of his country's laws, and he is not loyal.

It is time we were beginning to understand the meaning of words in this country. It is time, now that the war is over, when passion has subsided and when reason ought to come back and resume her throne, that we ourselves should be reasonable. Let us look at this in the light of the past; let us look at it calmly and coolly as we survey it in bygone thousands of years, not as it looks to the eye blood-shot with passion, red with a rage that is hardly dying out. Let the lower stock indulge in passion if it is to be indulged in; but here in this the highest forum of the nation; here where, if anywhere, there should be justice and fairness, and that broad view over the whole country which takes it all in and which considers all the people as the people, virtuous, intelligent, independent enough to govern the country; let us here be reasonable, and especially let us know the meaning of our words.

Mr. President, I have another objection to this measure, and that is to that section which imposes a punishment upon people who have not been heard and who have not been tried and who have not been convicted according to law. If there is one thing above every other thing necessary to the maintenance of personal liberty — I mean your liberty, my liberty, and the liberty of every man, great and small, noble and ignoble — it is that no man shall be condemned until he is heard. Who could have dreamed that men educated as we have been, impregnated as we ought to be with the love of English literature, English law, and English history, could stand here for one moment and sanction a proposition of this kind, and particularly when we look back and see the consequences which fell upon them from their bills of attainder; and their bills of attainder were — well, I was going to say they were right compared to this, but that is not the word; they were not the one thousandth part as reprehensible as this, because when they undertook to inflict punishment through the medium of the Legislature, they took the criminal and named him by name; they described him, so that, he could be known; they did not attempt to throw a dragnet over the whole country and to sweep in thousands of people and ostracize them, or punish them, make them eternal enemies.

Mr. President, if I wanted to sow the seeds of another rebellion, if I wanted to plant that fatal upas in this country, I would do it by means of just such a clause as that which deprives all men of the right to hold office who ever took an oath to support the Constitution of the United States, and that without hearing them, without inquiring how they engaged in the rebellion, whether they were commanded in by a superior authority that they could not resist, whether they were forced in by actual physical force, whether they were deluded in, or how they got in. What, sir, punish such people! I have no word that will convey my sense of the impropriety and impolicy, to say no worse, of such a provision as that.

When I reflect upon the conduct of this Government toward those men at the very time when it should have been on the ground to rescue them, I am more and more astonished at our own folly in uttering a word upon such a subject. They owed allegiance to this Government. Did it owe them nothing? It owed them protection. Did it protect them? What did it do? Many of the Senators within the sound of my voice know that on the 4th day of March, 1861, when we came here, the United States, the great protector of the people, the sovereign authority of the land, that to which they all looked, and had a right to look, to preserve them their freedom of opinion at least upon subjects of this kind — that Government was that day ignominiously out of possession of seven States of the Union; had its feet on but two points in those States, I believe, Pickens and Sumter. Those were the only two points in the seven States that were held; and held how? So far from being able to protect the people, those places were scarcely able to protect themselves, and Sumter certainly was not.

Did we go to the rescue? Did the Government go and fulfill its part of the contract? Did it give them protection? History answers. No, sir, they were allowed to be driven into that vortex of rebellion, nobody to stand between them and the current that was sweeping everything with it. They were in, and now, because they were in and because they were in on account of the neglect of this Government to give them the protection they deserved, they are to be punished. It is time we looked at it. Why should we not look at it? Are we afraid to look it in the face? Are we afraid to do right? Can we not now "be just and fear not?"

Mr. President, let me suppose a case. An old man lives in the South, an old Whig if you please, struggling for the last thirty years against secession, fighting it in all its shapes from nullification down, voting for Bell and Everett, if you please, in 1860, or voting for Mr. Douglas, because I suppose that everybody admits that those who then voted for those men were not disunionists, were not secessionists.

That old man sits there surrounded by his family and surrounded by his slaves; slaves that were born beside him, slaves perhaps that his own mother nursed when she nursed him; slaves that he loved; slaves that he was kind to, and slaves that today would go to him for a favor perhaps far sooner than to anybody else. There he is, surrounded by his sons and his daughters. In December, 1860, a messenger comes in, a son, if you please, and he says, "Father, the State has seceded." "The State seceded! What! Gone out of the Union! Oh, we'll see about that. Where is the United States? Where are the United States officers?" We shall have a halter about these fellows' necks before they know what they are doing. Seceded! Gone out of the Union! We'll see about that." The old fellow bustles about, and while he is bustling about another son comes in and says, "They have taken all the forts except Sumter, and all the United States officers are out of commission, every one; those

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that were true were frightened, and those who did not want to give up their offices have been threatened, and they have all resigned; there is no United States officer in South Carolina." What then? Where is your Government there to protect this man? He may have been a member of your Congress. He may have taken an oath to support the Constitution twenty times. He may have been a member of this body. What is he told? Where is he to go? He says, "I will see about this." He is an active, vigorous, energetic man, and he comes up here to Congress, and he finds Congress sitting at this end of the avenue, he finds the President sitting at the other end, and he tells them "South Carolina has seceded; you are out of possession; you cannot protect anybody; the whole people there are at the mercy of these secessionists. What are you going to do?" What did you do at either end of the avenue?

Mr. HOWARD. Ask Mr. Buchanan.

Mr. COWAN. Yes, and ask that Congress that sat here, too ask that Congress did it pass any bill to authorize him to put down the insurrection; did it make any provision? The history of that Congress is written. "Well," the old man says, "I cannot do any good here; these people seem to be all demented; they have forgotten what the Government was organized for; they have forgotten its mission. They seem to think it has no function, that it is to remain seated here and do nothing, and that the people will still maintain their allegiance to it as against State governments and confederate governments; however, this will be all right yet." He goes down home and tells the boys and everybody that things will be better after a little; that there is a new President coming in; that Congress and the old President are fighting and have got to loggerheads; one will not do this and the other will not do that, and both are waiting for some new advent.

The 4th of March comes round. What is done then? The new President finds himself here without an army, without a navy, without a treasury, everything demoralized, everything at sixes and sevens, and for six weeks neither he nor his Cabinet knew what to do. What is the old man to do in the mean time? The stern old patriot, good Union man, says, "Never mind; things will come right yet; after awhile these people at the North will get started and then we will be set all right; the traitors will be punished and we shall be protected." In the meanwhile one of the boys comes in and says, "Father, I have got tired of being called a traitor; I cannot stand it any longer; my neighbors are joining companies and regiments; and I am sometimes actually in danger of being mobbed when I go out; here are Vigilance Committees and Precipitators and Knights of the Golden Circle, and it is hardly safe for a man to go out; but they have offered to make me colonel if I will take command of a regiment. I do not see that we have any hope at all; Mr. Lincoln is not going to do any better than Mr. Buchanan; here we have waited a whole month and he has not done a thing; there have been no supplies thrown into Sumter, no troops sent there, no strengthening of that post; this is a foregone conclusion; can we look any longer to the Federal Government? Four months have already passed; I guess I'll take the colonelcy." The old man says, "I do not like that, but I do not see very well what else you are to do; if this thing shall succeed and you are not in it, of course you will be damned forever and spotted as a Tory down to the latest generation, perhaps; I guess you had better go in." John goes in and takes a colonelcy; Jim goes in and is made a major, and Ben is made a captain, and so on; and about the time that is done they fire on Sumter and the North is on fire. Armies are in motion to go down and rescue these men after they have been in the toils.

Well, let us follow it a little further. Before our armies get within one hundred miles of this old man to protect him, to stand between him and the secessionists, he finds posted up on the wall a proclamation. What is that proclamation? Why that he is a sinner, a man who has violated a great moral law of God in the universe in owning

slaves, and that his slaves that he owned, that he looked upon as his property, that he believed were his property, that had come to him from his father, if you please, were freed.

"Now," says he, "that may be; but I always thought that when a man committed a sin he ought to know it. I do not understand slavery to be a sin in itself. My father did not teach me so; my mother did not teach me so; the church did not teach me so; our people all around here did not believe so. Our people thought slavery in itself was indifferent; that if a master took a hundred negroes and made them happier than they were before, wiser than before, better than before, it was a virtue, and if he took them and made them worse it was a sin; and who dares tell me that I have been a sinner in this behalf? And what kind of protection is this that a Government is to afford me to allow the country to be covered with war and desolation for months on account of its neglect at the outstart, and then after doing all this I am to be told, true as I have been to the Constitution and the laws and the flag, that I am a sinner and to be bereft of my property? However, perhaps this is after all right this is a great Union and a great country, and we can afford great sacrifices for it, and I will submit to this and be a Union man still." Then after war is over, after peace has come back, his sons are disfranchised, or rendered ineligible to office; every kind of ignominy is heaped upon him and upon them; they are punished without being tried, they are convicted without being heard; their apologies are not considered; they are not considered in court; they are not considered in the legislative hall; this old man is not allowed the poor privilege of a Friend from his district to come here and offer the little apologies he may have for himself and his children.

That is an American citizen, a true man, a Union man; and this is the way we legislate for our fellow-citizens! This is the cement with which we propose to bind this Union again! This is the way we expect to extend the hand of fellowship to the Union men of the South! This is the thing we expect will secure to our children and to our children's children a future for the great Republic. Think of it! I hear gentlemen taking airings in history; we were treated to a dish of it this morning. I would advise gentlemen to read Prendergast's History of the Cromwellian Settlement in Ireland. Read the Partition of Poland. Read the suppression of all rebellions, and read where this operation has been performed successfully of putting down a rebellion and healing the wounds caused by it, and ask whether this is part of the machinery that was resorted to there. Go to Roman history; read it from end to end, and see whether when they conquered a people whom they wished to unite to themselves they imposed conditions, whether they said, "You must do this and you must do that, you must pass under the yoke." Never, never. If the Romans intended that a conquered people should live with them they made them their equals immediately; they gave them all the rights of Roman citizens; and what was their argument? "They will love us the better the better we treat them, and they will hate us the worse the worse we treat them."

Then, Mr. President, there is a fundamental principle, a principle fundamental in the hearts of Englishmen, I hope, and their descendants; fundamental in our history, fundamental in our traditions, fundamental in our beliefs, fundamental as our religion; it is that no man is to be convicted without being heard. How can you tell what a man has to say who was engaged in the rebellion? You refused to put the word "voluntarily" in. Do you propose to punish a man who was compelled to commit a crime involuntarily? And yet you do if he engaged in the rebellion.

Gentlemen tell us it is no punishment to say that a man shall have no voice and shall not be eligible to office. That might do to tell some of the verdant, virtuous districts out through the country, but it is a very singular speech here in the United States Senate, composed of forty or fifty men who have been all their lives struggling for offices, and have got very high ones at last. No punishment to say that a man shall not be elected to office! What kind of ideas of punishment must some people have? Do they think that punishment consists alone in pulling teeth or smashing thumbs in the thumb-screw, or putting boots on the leg? Is that the only kind of punishment you can inflict on a man? Is there not such a thing as setting a mark upon him, the punishment of the first murderer, sending him out to wander through the world like the man in the novel who had no shadow? Is it no punishment to put a wolf's head of this kind upon a man, to single him out, set him apart in the community, and label him "traitor, ineligible?" Do you know any men of our breed on the earth that ever submitted to that long? I should like some gentleman to consult his history and find when and where men of our race submitted to that long.

Mr. HOWARD. I refer the Senator to the Constitution of the United States, which declares that none but a natural-born citizen of the United States shall be elected President of the United States. That is one instance.

Mr. COWAN. Oh, that is a capital joke, Mr. President. Now, we have been bamboozled and fed on that kind of stuff for the last four years. That is an answer to the argument! I ask the honorable Senator if he believes there is a sane man in the world who thinks that has anything to do with my argument. It has no more resemblance to the case I put than a hawk has to a hand-saw—not a bit. Because all the people who are not born in this country cannot be President they are punished! Is that so?

Mr. HOWARD. I do not think so.

Mr. COWAN. I do not think so either. Nobody believes that that is any punishment or any stigma or anything else upon those people; but if I were to select the honorable Senator from Michigan and say to him, by law or otherwise, "You shall not sit upon a jury; you shall not sit in the Legislature; you shall not wear the ermine of a judge; you shall not be Governor of your State or Senator from that State," I should like to know what he would think of that. What would he say to his wife and children in explanation of that? "How does it come that our father cannot be a judge, so good a lawyer as he is? How does it come that he cannot go to the Senate of the United States, eloquent and learned, as he is, and superior to the men whom we are obliged to send?" What would be his answer? "My children, I have committed no crime; my name shall come down to you pure and unspotted as it did from my own father; but I am the victim of a law which condemned me without hearing me, convicted me without a trial, and punished me not even by name, but by class."

I am reminded by my learned friend from Wisconsin [Mr. Doolittle] that we ourselves made that a part of the punishment of treason; and the honorable Senators who think this joke is an answer to a ponderous argument, that this quip and quirk is to stand in the face of a great fact covering eleven States of the Union, voted for it. We ourselves made it a part of the punishment of treason. It is in the book; I need not read it. That is a fact; and yet we are told this is no punishment. I ask again, and I defy gentlemen to put their finger upon a single instance where our race submitted to this, or submitted to it long. Impose that upon the southern States, pass this bill of attainder through the medium of an amendment to the Constitution, and the seeds of rebellion are there, and they will grow, and the feeling of this injustice will grow with it; and if redemption cannot come the children of the men you render ineligible to office in a very short time will themselves make a mighty army, an army not

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to be conquered in a cause of that kind. No, Mr. President, let us treat these people fairly, let us give them their rights under the Constitution and the laws; and if they merit punishment, let us mete that punishment out to them by the law, not by bills of attainder or *ex post facto* laws, not by making a law as amendments to the Constitution. If we can maintain the Union at all, we can maintain it in that way. If we cannot maintain it in that way we cannot maintain it at all.

I am aware, Mr. President, that this is a foregone conclusion. I am aware that it was decided that something must be done, and I know how difficult it was to get that something into being, to get that unlicked bantling into shape. I know how long the period of parturition has lasted. And, Mr. President, I am afraid, too, that if it had not been from pride of preconceived opinions it would have been strangled by its own mother at the instant of its birth. I believe she would have been glad to get rid of it if it had not been for that pride. But it is here, it is to go through, it is to be proposed to the people; but relying upon the people, upon the sense of the people, I have no fears for the result.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Wisconsin, [Mr. DOOLITTLE.]

Mr. VAN WINKLE. I desire to say that my colleague [Mr. WILLEY] has been called away for this afternoon.

The question being taken by yeas and nays, resulted — yeas 7, nays 31; as follows:

YEAS—Messrs. Cowan, Davis, Doolittle, Guthrie, Hendricks, Johnson, and Riddle—7.

NAYS—Messrs. Anthony, Chandler, Clark, Conness, Cragin, Edmunds, Fessenden, Foster, Grimes, Harris, Howard, Howe, Kirkwood, Lane of Indiana, Lane of Kansas, Morgan, Morrill, Norton, Nye, Pomeroy, Ramsey, Sherman, Sprague, Stewart, Sumner, Trumbull, Van Winkle, Wade, Williams, Wilson, and Yates—31.

ABSENT—Messrs. Brown, Buckalew, Creswell, Dixon, Henderson, McDougall, Nesmith, Poland, Saulsbury, Willey, and Wright—11.

So the amendment was rejected.

Mr. WILLIAMS. Mr. President—

Mr. DOOLITTLE. Before the Senator from Oregon proceeds to offer any amendment I desire to offer one further amendment.

Mr. WILLIAMS. The Senator will excuse me.

Mr. DOOLITTLE. Does the Senator offer an amendment in behalf of the committee? I supposed the committee's amendments were through with. I had two or three amendments I desired to offer.

Mr. WILLIAMS. I beg to be excused from yielding the floor. I move to strike out the second section and substitute these words for it:

Representatives shall be apportioned among the several States according to their respective numbers,

counting the whole number of persons in each State, excluding Indians not taxed. But whenever the right to vote at any election held under the Constitution and laws of the United States, or of any State, is denied to any of the male inhabitants of such State, being twenty-one years of age and citizens of the United States, or in any way abridged except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Mr. SHERMAN. I should like to have that printed.

Mr. CLARK. It is merely in a better form.

Mr. SHERMAN. I should like to have the opportunity of seeing it in print.

Mr. HOWARD. I can assure the honorable Senator from Ohio that the amendment offered by the Senator from Oregon does not vary in effect the second section. It is a more condensed form in which the ideas contained in that section are expressed, but I am not aware that it changes the meaning and legal effect of the section at all. I hope, therefore, it will be adopted as it has been very carefully and thoroughly considered.

Mr. JOHNSON. So was the clause as it stands carefully considered. I ask for the reading of that amendment again.

The Secretary again read the amendment.

Mr. JOHNSON. I should like my friend from Oregon to state in what the amendment differs from the section as it stands.

Mr. WILLIAMS. I will state that in substance and effect it is the same as the original section; but the words "the right to vote" are substituted for the words "the elective franchise." It was suggested, with considerable force, that this section related to the apportionment of representation, and that the words "elective franchise" might be construed as exclusively applying to that subject, and that a State might claim that it was entitled to count persons as allowed to vote when it extended the elective franchise to such persons so far as the election of Representatives was concerned; and therefore the words "any election held under the Constitution and laws of the United States or of any State" were substituted so that electors could not be deprived of the right to vote at State elections. The object of the change in the phraseology is to require the State to allow those persons, before they can be counted in the basis of representation, to vote at elections held under the constitution and laws of the State as well as at elections held under the Constitution and laws of the United States; so that there is substantially no difference. There is a change in the phraseology; some of the sentences and words are transposed, the object being to make the section more clear and explicit and satisfactory than it was in the other phraseology.

Mr. JOHNSON. Will the honorable member explain why it is that the words "which may be included within the Union," in the eighteenth line are omitted in the amendment?

Mr. WILLIAMS. They were omitted for the sake of brevity and because they added nothing to the sense of the section.

Mr. JOHNSON. That is the language of the original Constitution.

Mr. WILLIAMS. That is true. At that time, when the Constitution was adopted, there were States that had not been admitted into the Union, States that might not ratify the Constitution, and those words were intended I suppose to apply to those States that might ratify the Constitution afterward. At this time these words are not supposed to be applicable, and certainly the Senator will not contend that the words in the proposed substitute are not as full and as complete as the words in the original section, and they are altogether more brief. That is the only reason why those words were omitted.

Mr. HENDRICKS. I suppose it is desirable that we shall know what is in this amendment, and of course we could not understand its full force by merely hearing it read. I move that the Senate adjourn. It is past the usual hour of adjournment.

Mr. DOOLITTLE. If the honorable Senator will allow me, I should like to submit amendments that I intend to propose, so that they may be printed also.

Mr. HENDRICKS. Very well.

Mr. DOOLITTLE. I desire to submit amendments to be printed.

The PRESIDING OFFICER. The Senator from Wisconsin proposes an amendment which he intends to offer at another time, and asks to have it printed. The order to print will be made.

Mr. DOOLITTLE. The effect of my proposition is that each of these sections shall be submitted as separate articles, to be passed upon severally. That is the effect of the amendment of which I now give notice.

Mr. HENDRICKS. I move that the pending proposition be printed, and that the Senate adjourn.

The PRESIDING OFFICER. The order to print will be made if there be no objection. The Senator from

Indiana moves that the Senate do now adjourn.

The motion was not agreed to, there being 10 in favor of the motion and 19 against it.

Mr. HENDRICKS. I do not expect to vote for this proposition nor the one for which it is proposed as a substitute, but still I presume that even the minority have some little say and do about an amendment of the Constitution. Yesterday afternoon there was no press upon the Senate to stay here and consider this resolution. We adjourned at an early hour, when the Senator from Wisconsin [Mr. Howe] was making his speech, I believe about four o'clock. I suppose he was a little fatigued in making his speech, and some Senator proposed that we adjourn — I think it was the Senator who has charge of this measure — and there was no Senator who thought of questioning the propriety of the adjournment to accommodate the Senator from Wisconsin.

Mr. HOWE. The adjournment was not at my request at all.

Mr. HENDRICKS. By no means; but the Senator yielded that the motion might be made; no further business was transacted in open Senate; we went into executive session for a little bit. Now, there is a proposition simply that we adjourn that a very important amendment may be printed. I do not suppose it is the purpose to pass this measure tonight. I have not heard that expressed. I do not want to discuss it myself; but I should like to know what is in it before we vote on it. If it is better than the original, I want to vote for it; if it is not better, I do not want to vote for it as an amendment. I have a right to know what is in it because my judgment stands before the country upon the two propositions. This is an amendment to the caucus proposition, and I want to know whether it is better or worse. I have to give an intelligent vote on the subject, and I find it is impossible to know just what is in it by merely hearing it read. The language is changed materially.

Mr. JOHNSON. I certainly have no desire to delay the action of the Senate if their minds are made up on the question; but I do not understand this amendment, and I have had it and the original section in my hand now for some three or four minutes; at least I do not understand it as I suppose it is understood by the gentleman who offers it. It appears to me to be obnoxious to this objection, and if it be liable to this objection I imagine that the Senators who are now apparently in favor of it will correct it in that particular. That part of the amendment to which I refer says that whenever the right to vote at any election held under the Constitution and laws of the United States, or of any State, is denied to any of the male inhabitants of such States, being twenty-one years of age, &c., a deduction is to be made. Now, sir, in all the States — certainly in mine, and no doubt in all — there are local as contradistinguished from State elections. There are city elections, county elections, and district or borough elections; and those city and county and district elections are held under some law of the State in which the city or county or district or borough may be; and in those elections, according to the laws of the States, certain qualifications are prescribed, residence within the limits of the locality and a property qualification in some. Now, is it proposed to say that if every man in a State is not at liberty to vote at a city or a county or a borough election that is to affect the basis of representation? I submit to the friends of this measure, and I speak it, as I am sure the Senate will believe me, in all sincerity, when I say as it is all-important that the provision which we are about to adopt, or whatever we may adopt, shall be as certain as we can make it, that we had better print this amendment and bring to the consideration of it in the morning a better judgment than we may be able to form, at least than I am able to form, at this time. I move, therefore, that the amendment lie upon the table and be printed.

Mr. MORRILL. A motion to print it has been agreed to.

Mr. JOHNSON. No; the order to print has not been made.

The PRESIDING OFFICER. It is not in order to move to lay the amendment upon the table.

Mr. ANTHONY. That would carry the bill with it, as I understand.

Mr. JOHNSON. Then I move that the amendment be printed. That answers the same purpose
The motion was agreed to.

Mr. DOOLITTLE. I ask that the amendment which I proposed to submit be printed also.

The PRESIDING OFFICER. The order to print has already been entered.

M. HENDERSON. I am a friend of this measure, and I expect to vote for it and every one of these sections. I think, however, that at this hour of the evening the friends of the proposition ought not to insist upon a vote upon it. I have never seen this amendment before; I have not examined it; it is entirely new; and when the Senator from Oregon offered it I really did not know whether it came from himself or the committee. Certainly we do not desire to take from the opponents of this measure the opportunity of judging it and examining it, and much less can we wish to take from our own friends the opportunity of examining the principles contained in it. It is now five o'clock; it is the usual hour of adjournment.

Mr. CLARK. Will the Senator allow me to offer an amendment before he moves an adjournment?

Mr. HENDERSON. I will give way for a moment until you present it.

Mr. CLARK. With the permission of the Senator from Missouri, if there is a disposition to adjourn, I wish to offer an amendment to strike out the fourth and fifth sections and to substitute what I send to the Chair, and I will state for the information of Senators that it is an amendment from the committee. I move that it be printed.

The PRESIDING OFFICER. The order to print will be entered, if there be no objection.

Mr. HENDERSON. Now I move that the Senate adjourn.

Mr. ANTHONY. I hope that before we adjourn some understanding may be arrived at on both sides of the Chamber as to when we shall have a vote on this question. I think we should take advantage of the good feeling that is exhibited at present to come to some understanding on that point.

Mr. HOWARD. I trust we shall stay here a little longer today and make some further progress in the discussion. There are several Senators on the other side of the Chamber who intend to speak to the measure which is now under consideration, and I am anxious to make all the progress that is possible today and tomorrow; and I wish it understood that so far as it depends on me I shall expect that the final vote will be taken at least on Friday.

Mr. CLARK. Tomorrow.

Mr. HOWARD. I say at least on Friday.

Several Senators: Tomorrow.

The PRESIDING OFFICER. The Senator from Missouri moves that the Senate do now adjourn.

Mr. HOWARD. I hope we shall not adjourn.

The motion was not agreed to; there being, on a division — ayes 11, noes 17.

Mr. HENDRICKS. Mr. President, I had a sympathy today for the Senator from Ohio [Mr. Sherman] when he announced to the Senate that his judgment was that the amendment proposed by the Senator from Wisconsin was right; that of the two measures that ought to be a part of the Constitution rather than the proposition of the caucus, but that he could not support it; and he said that I had been placed in like circumstances a hundred times, and my political friends had decided for me how I should vote. I desire to say to that Senator that he is entirely mistaken upon that proposition. I never in my life cast a vote upon an important legislative measure because any body of men said I should; and I do not think I ever will. I am responsible to the people of the State of Indiana; and when it is proposed to change the Constitution of the country, I must be satisfied in my own judgment that the proposition is right, that it is the best proposition that is before the body, or that my constituents expect me to vote for it, else I cannot give it my vote.

Mr. FESSENDEN. I should like to ask the Senator a question it lie will allow me.

Mr. HENDRICKS. Certainly.

Mr. FESSENDEN. Has it ever occurred in the history of that Senator that when he became satisfied that he could not get what he wanted he voted for the next best thing he could get, or did he stick to the first and lose it, and let the other go with it?

Mr. HENDRICKS. I do not recollect ever to have been placed in just that embarrassment. I am practical in my views as a general thing, and do the best I can.

Mr. FESSENDEN. That, I suppose, is the case with the Senator from Ohio.

Mr. HENDRICKS. I do not recollect any particular instance in which I was placed in the embarrassment the Senator suggests.

Mr. FESSENDEN. I can vary the form of my question.

Mr. HENDRICKS. Will the Senator allow me to complete my answer? When a proposition is before a legislative body, and an amendment is proposed to it, and the amendment, in my judgment, is better than the original proposition, I am never so embarrassed as to say that I shall vote for the more objectionable of the two propositions. I do not do it, and my party never ask me to do it.

Mr. FESSENDEN. I suppose, then, if the Senator was satisfied that his vote would be thrown away on the first proposition but would have effect on the second, he would prefer to throw away his vote and thus lose both.

Mr. HENDRICKS. I should vote for the proposition that my judgment approved. But so far as I have been connected with political parties I have never gone into any caucuses to decide upon any legislative measures. I have gone into caucuses to decide who should be the presiding officer of a body, and how the organization should be completed; I have gone into conventions for the purpose of establishing platforms for a political campaign; but to go into a convention of the members of the Senate or of the House of Representatives, in which a majority decides how the vote shall be cast and that majority fixing it, a measure is brought before this body which two thirds must support before it shall pass, I say is exceedingly objectionable. That is the position that the Senator

from Ohio admits himself to occupy today. Upon a measure that two thirds of the Senate, under the Constitution, must approve before it can be submitted to the people, he subordinates his judgment to the will of a majority of his party friends in a caucus. He says his judgment approves of a particular proposition. I think that is illustrative of the present condition of the Senate.

How the Senator from Oregon comes to offer an amendment at this time, I do not know. The amendment comes here. Whether he was authorized to make the proposition, whether there was some latitude allowed to him in the decisions, I do not understand. It seems to meet with favor. I do not want to vote upon it tonight; I am not ready to vote upon it; but I am willing to stay here and discuss the question until in the end we get to know something about it. As a part of my remarks, I ask that the proposition of the Senator from Oregon be read.

Mr. SHERMAN. As a matter of course, in making the observations I did, I did not seek the approval of the Senator from Indiana, and do not now; but I have no doubt, and I repeat the assertion, that he has frequently, very many times, in the course of his legislative experience, found himself compelled to vote for a proposition which contained some matter in it that was objectionable. Scarcely a bill passes any legislative body, but what, when a member offers an amendment and fails to carry it, he votes for the measure although he has failed to carry his amendment; and I think that the Senator, who is under pretty good discipline in the Democratic party, has often given way his opinion on minor matters in order to carry a great proposition. My position is precisely this: I believe that several amendments of the Constitution are imperatively necessary. One of the amendments proposed relates to the basis of representation. Upon that I have a clear conviction that the gentlemen who will vote for these amendments have fallen into an error. Either I am in error or they are. I still think more than ever that the simple true basis is the number of voters; citizens of the United States fixed by the law of the State; but that proposition is voted down by a majority of those with whom I act. I do not expect the opposite side to vote for any of these propositions, and I do not consider their opinion worth much, because they commence by opposing the whole proposition. I do not regard their opinion as entitled to much weight with me in fixing the terms of the amendment. When each proposition has been agreed upon by the majority of those expected to vote for the whole, and I am called upon to vote on the whole proposition and defeat the whole proposition, or vote for it with some clauses that do not exactly suit me, as a matter of course I will vote for them; and I have no doubt the Senator from Indiana would do the same thing if he were in my place.

Now, in regard to another matter, I do think that the attempt to press a vote on an amendment to the Constitution, which, although it is said only differs in form, none of us have had an opportunity to read, is made probably at this period of the day without sufficient reflection. Perhaps all of us will agree that the amendment proposed by the Senator from Oregon — a change of phraseology as he says — is the better proposition; but certainly, having adjourned yesterday at half past three o'clock when one of our own political friends was speaking in order to enable him to take two days to make a speech, we can scarcely refuse an adjournment now to the minority in order that they may be heard.

Mr. CLARK. We adjourned yesterday at a quarter past four o'clock.

Mr. SHERMAN. It is now five o'clock, and two amendments are introduced to the Constitution, it is true, only varying in form; but to attempt to force a vote on them tonight is simply absurd. It cannot be done in a body organized like the Senate. I, however, sympathize with all as to the long time that has been occupied by this debate, and I think a time ought to be fixed for taking the vote. The Senator from Michigan having this matter in charge says that he expects a vote on Friday evening, and if he adheres to that I will support him in it.

Mr. HOWARD. I said "at least on Friday;" and I expect the vote to be taken in the morning.

Mr. SHERMAN. I will support him in that. If some general understanding can be effected by which the vote may be taken on Friday I have no doubt we shall be able to get through without being at all hurried in the mean time.

Mr. CONNESS. I move that the Senate adjourn.

Mr. HENDRICKS. Mr. President—

The PRESIDING OFFICER. The Senator from California has the floor.

Mr. HENDRICKS. The Senator from California has not the floor.

The PRESIDING OFFICER. The Senator from California was recognized by the Chair.

Mr. HENDRICKS. I yielded the floor to the Senator from Ohio.

The PRESIDING OFFICER. The Chair was not aware of that.

Mr. HENDRICKS. I am not anxious about adjourning. I am entirely indifferent on that subject. If it is the pleasure of the Senate to stay here and discuss this measure this evening, I would just as lief go on now as at any other time.

Mr. CLARK. If the Senator will permit me, I wish to make a suggestion to him. I do not suppose anybody on this side of the Chamber, or in the Senate, desires to force a vote

tonight, but we desire to make some progress; for I think all Senators will bear me witness that we have never been so much behind in matters before the Senate at any session as we are now. It is desirable for some of us to have a vote on this question on Friday by three or four o'clock.

Mr. JOHNSON. Say five o'clock.

Mr. CLARK. That would put it out of the power of some of us to go away from the city. It is necessary, I will say, that I should leave in the train on Friday evening, if I can. If we can have a vote by three or four o'clock on Friday.

Mr. JOHNSON. The train does not go until half past six.

Mr. CLARK. But we shall want something to eat after we get out of the Senate. If we can agree to take the vote by three or four o'clock on Friday, I shall be entirely content.

Mr. HENDRICKS. I have a few remarks to make yet. I have repeated the expression so often that I do not care to do it again, that we ought to press the business that is before the Senate. I have expressed my desire that we shall not be kept here in the very hot months; but I have become almost indifferent about that. When I proposed this afternoon to adjourn, I thought it was a very reasonable proposition, especially in view of the fact that we had adjourned yesterday afternoon simply to accommodate a Senator who was addressing the Senate, and to allow him to occupy two days instead of one, and especially in view of the fact that that one Senator has occupied more of the time of the Senate than all the minority put together. I have also desired to agree upon some time when the vote shall be taken. I have always been ready to agree upon an hour for taking the vote on any proposition before the Senate; but I am entirely indifferent now, and would just as lief stay here for the remainder of the evening as not.

I wish to speak of one other proposition of ethics on the part of the Senator from Ohio. In his usual plausible and delightful style he said that he would go with his party friends for a proposition that did not command his judgment rather than go with the Opposition and a portion of his party friends for a proposition that did command his judgment.

Mr. SHERMAN. I do not think the Senator quite states my position.

Mr. HENDRICKS. That is about the idea. I was trying to give the very words the Senator used, and I thought I had them, but not quite. That was about the idea, that rather than be associated with Democrats in the right, he would be associated with Republicans in the wrong. I can only account for that on the part of so elevated a gentleman in morals and intellect by the fact that he has been associated with Republicans in so much that is wrong he has to some extent become satisfied with that condition.

The Senator laid down another proposition which struck me as singular. He said that if the southern States refused the right to vote to the negroes, and thereby said the negroes were not fit to vote, the southern people ought not to have representation for a class of men that they themselves said were unfit to be citizens. I want to know how the Senator is going to vote for this proposition if that doctrine be right; and it is not upon non-essentials, it is upon essentials. It is upon the most essential feature of this resolution — the relative representation of the States in the House of Representatives. It is not a non-essential; it is of the very essence of the resolution. The people of Missouri have by a most unjust, as I think, provision of their constitution said that one half of the people of Missouri are unfit to vote. How is it that the Senator will now, in amending the Constitution, continue to that minority a right to representation for the majority which they have by constitutional amendment declared unfit to vote?

Mr. SHERMAN. Do you want an answer?

Mr. HINDRICKS. Apply the principle. I am just discussing it. The Senator says that if the southern States elect to hold that the negroes are unfit to vote, they shall not be voted for upon principle; but upon principle if in Missouri a minority, by accidental power, excluding a majority, upon the ground that the majority is unfit to vote, the minority shall have a full representation for the whole. I want to know how that is. It is not upon a non-essential, not upon a matter of organization or political policy with which he agrees with his party, but upon a question of equality and justice in the representation of the States; upon the very merit and heart of this measure, if it has got any merit at all.

Mr. President, if it is the pleasure of the Senate to adjourn I will not occupy the Senate any longer at this time; but whatever is the pleasure of the majority is my pleasure on that question.

Mr. STEWART. I move that the Senate adjourn.

Mr. DAVIS. Mr. President—

Mr. STEWART. I withdraw the motion temporarily if the Senator from Kentucky desires to speak.

Mr. DAVIS. I have two or three amendments that I want to present, and should like to have the amendment offered by the gentleman from Oregon voted on before I move them.

Mr. SHERMAN. You can speak on that just as well.

Mr. DAVIS. I will adopt the course suggested by the honorable Senator from Ohio, and speak to the general proposition of my amendments.

Mr. STEWART. I move that the Senate adjourn.

The motion was agreed to; and the Senate adjourned.

RECONSTRUCTION.

The Senate, as in Committee of the Whole, resumed the consideration of the joint resolution (H.R. No. 127) proposing an amendment to the Constitution of the United States, the pending question being on the amendment offered by Mr. WILLIAMS, to strike out the second section and in lieu thereof to insert the following:

Sec. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But whenever the right to vote at any election hold under the Constitution and laws of the United States, or of any State, is denied to any of the male inhabitants of such State, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Mr. DAVIS addressed the Senate for nearly four hours. [His speech will be found in the Appendix.]

Mr. HENDRICKS. If no gentleman desires to speak, I was requested by the Senator from Maryland [Mr. Johnson] to take the floor for him, as he wishes to address the Senate on the question; and unless some gentleman proposes to address the Senate now I will move an adjournment.

Mr. CLARK. I will inquire of the Senator from Indiana if he will not withdraw that motion and let us come to a vote on the amendments. We perhaps can take a vote on the amendments without debate, and then go on with the debate, on the resolution in the morning, and thus save a little time.

Mr. HENDRICKS. I have no objection to that.

The PRESIDENT *pro tempore*. Does the Senator from Indiana withdraw his motion?

Mr. HENDRICKS. Yes, sir,

The PRESIDENT *pro tempore*. The motion to adjourn is withdrawn, and the question is on the amendment offered by the Senator from Oregon [Mr. WILLIAMS] to strike out the second section of the resolution and insert a substitute.

The question being put, the amendment was declared to be agreed to.

Mr. HENDERSON. I ask for a division. I hope the amendment will not be adopted.

The PRESIDENT *pro tempore*. The Chair declared it carried.

Mr. HENDERSON. I ask for a division.

The PRESIDENT *pro tempore*. Those in favor of the amendment will rise.

Mr. HENDERSON. I desire to say just one word before the division. I will not take up any time. The object of this amendment is to secure nothing more nor less than is secured by the second section of the original proposition, and it is not pretended by any gentleman that it will accomplish anything additional to what is included in the section as it now stands. I will state a fact in reference to my own State, and then the Senate can do with it what it chooses.

This amendment reads:

But whenever the right to vote at any election held under the Constitution and laws of the United States, or of any State, is denied to any of the male inhabitants of such State, &c.

Now, we have in our State an election for school directors, a general election held in every municipal township throughout the State of Missouri, at a certain time. At that election there are qualifications prescribed that we deem absolutely essential to keep up the common-school system in our State. For instance, property holders only vote for school directors, because the tax for building the school-houses is only imposed on property holders. There is an election also for school trustees. The school directors divide the congressional townships into districts for school purposes, and those trustees are elected by the persons who have children to send to school. Now, if it be intended to exclude all persons who cannot vote at those elections from the basis of representation, I apprehend that not only will the negroes of my State be excluded under the proposed amendment, which will lose us a member in Congress, but it will exclude two thirds of the whites of the State of Missouri. I desire to know whether any such construction can be given to this proposition.

It has been said, in reply, that the proposition as it now stands is subject to the same objection. I think not; because no court will construe, and Congress cannot possibly construe, the meaning of "the elective franchise," as generally used, to apply to such elections as that. I, at least, prefer the language of the original section to this amendment. I do not want to put myself in the way of what has been determined by the committee; but I do not desire to vote for a proposition that a sound and reasonable argument can be made against. I see no use of it. We do not accomplish anything whatever by it. Of course it may be left to Congress hereafter to say, under the section

as it now stands, whether "the elective franchise" has been refused or not, and of course they will apply it to the general elections for political offices. But the language of this amendment is, "whenever the right to vote at any election." That language is not used in the original section. There is an election in my State where individuals are denied the right to vote unless they have a property qualification. The section which it is now proposed to strike out and to put this in lieu of it does not contain this objectionable language. It does not say "at any election." Therefore the inference will be that it applies only to those general elections at which political officers are elected, members of the Legislature, Governor, judges, &c. I prefer that this amendment should not be adopted. I do not think it ought to be the desire of members of the Senate to put any gentleman in an indefensible position in his own State where the laws of his State are of such a character that he cannot defend himself against a reasonable, rational opposition.

Mr. FESSENDEN. The Senator is in error in one particular, in saying that there was no difference between this amendment and the section as originally reported.

Mr. HENDERSON. In design.

Mr. FESSENDEN. There is no difference in design; but the difficulty is, that as originally reported the provision was, in my judgment, and in the judgment of others, quite imperfect, for this reason: its language was, "if the elective franchise shall be denied or in any way abridged." The preceding clause was that "Representatives shall be apportioned" in such and such a manner. The subject-matter of the clause is simply the apportionment of Representatives in Congress. Then it goes on to say, "if the elective franchise shall be denied." It is a very common and well-received rule of construction that the words in a sentence must, if they can be naturally, be limited to the subject-matter of the provision itself. Therefore it might be held, and in my judgment it might be properly held, as the section stood originally, that if the elective franchise was granted in the election of Representatives to Congress and denied in everything else, that denial in everything else would not have any effect on the basis of representation, and under that construction the provision would not accomplish the purpose which was designed, because it was designed to cover the whole; and therefore it became necessary to change the language. The committee decided that it was advisable to change the language, and we decided on the language that is found in the amendment now before us. If other language can be found that is unobjectionable, and that would cover it, of course we are not particular about that.

I do not think the amendment is open really to the objection that my friend has stated. It is intended to cover the election of officers generally; but if all those arrangements which are made with reference to minor matters are looked to, it would be impossible absolutely to give it any practical effect, because you never could tell what the numbers were that were disfranchised, if you please to call it disfranchisement, by any provision of the kind that he speaks of. If it would be held to apply to the election in school districts of school officers, I do not see why, by the same rule, it would not apply to the election of directors in banks or other corporations in the States, and certainly it never would be carried to that extent. The words must have a reasonable construction always, and a reasonable limitation.

Mr. HENDERSON. Will it apply to the election of city officers under the amendment as it now stands?

Mr. FESSENDEN. I think it would to municipal officers.

Mr. HENDERSON. Then why would it not apply to the election of a township officer, because that, is still larger?

Mr. CLARK. Is it a political office? I do not think a school director is.

Mr. HENDERSON. The mayor or recorder of a city is not a political office.

Mr. FESSENDEN. A municipal officer is a term very well understood. I think it would be a matter of difficulty, not to say impossibility, to carry it out with reference to finding out who were disfranchised in such elections as the Senator speaks of, and I do not think this proposition could be held to apply to such elections at all. I do not believe it will be attended with any difficulty. At any rate, to meet the object, we could not devise a better form of words than we have. I know I worked on that second proposition until my head got so thoroughly muddled with it that I would not attempt to make another.

Mr. HENDERSON. I suppose it is in order to amend the proposition before it is acted upon.

Mr. FESSENDEN. I suggest that the Senator had better let it be adopted, and then he can move his amendment when we come into the Senate and he will have an opportunity to deliberate upon it in the mean time.

Mr. HENDERSON. I do not wish to take any time about it; but my objection is a serious one, and I am in earnest about it. It is a thing that I really think ought to be attended to.

Mr. TRUMBULL. We do not seem to be making any progress, and there is some misunderstanding as to what the precise meaning

of this language is. I suggest, therefore, whether we had not better adjourn and settle it in the morning. We all desire the same thing, I suppose.

Mr. FESSENDEN. We had better get through with these amendments and have the resolution reported to the Senate, and then we can amend this proposition afterward, if necessary.

Mr. TRUMBULL. But we are not likely to get through them, because there is a controversy arising, and if we have got to change them we had better have a little time to consider them.

Mr. CLARK. I suggest that we have the resolution reported to the Senate, and then we shall have time to change it.

Mr. TRUMBULL. Nothing will be gained by that.

Mr. CLARK. We shall get through one stage of it.

Mr. TRUMBULL. I shall not make a motion to adjourn if it is objected to, but I think we might as well adjourn.

Mr. HENDERSON. Before the Senator makes his motion to adjourn, I desire, if this amendment must be adopted, to move an amendment to it. I move to strike out the words—

But whenever the right to vote at any election held under the Constitution and laws of the United States, or of any State, is denied to any of the male inhabitants of such State, being twenty-one years of age—

And to insert:

But whenever the right to vote for Governor, judges, or members of either branch of the Legislature is denied by any State to any of its male inhabitants being twenty-one years of age, &c.

That will certainly include all general officers of a State.

Mr. FESSENDEN. That does not include Representatives to Congress.

Mr. HENDERSON. The Senator from Maine seems to be laboring under the impression that that does not include Representatives to Congress. The Senator is mistaken.

Mr. FESSENDEN. I suggest to the Senator whether he had not better let the amendment of the Senator from Oregon be adopted, and then move his proposed amendment when we get into the Senate, and it can be considered tomorrow morning.

Mr. HENDERSON. I desire to correct the Senator. The Senator labored under an error when he said that that amendment would not apply to the election of members of Congress. The subject-matter that we are talking about now is the qualification of voters. I say that the qualification of voters shall be of a certain character for the election of members of either branch of the State Legislature. The Constitution, as it now stands upon that subject, provides in the second section of the first article that—

"The House of Representatives shall be composed of members chosen every second year by the people of the several States: and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature."

Therefore, when you fix the qualification of voters for the most numerous branch or the lower branch of the State Legislature, you fix the qualification of voters for members of Congress. You do not propose to alter the Constitution on that subject. The Senator is mistaken in another proposition — that it will not apply to an election held under the Constitution and laws of the United States. The only election that can be held under the Constitution and laws of the United States is for members of Congress. There is but one other case, and that is the election of Electors who elect the President; but those Electors, as now provided by the Constitution, are to be elected by the State in any manner it chooses. A State may provide that the State Senate may elect the Electors, or it may provide that the two branches of the Legislature may elect them. In South Carolina they are never elected by the people; and unless you alter the Constitution on the subject the State Legislatures will yet have the power to regulate that matter entirely as they please, and this amendment will not change it at all. There is, therefore, but one election that can be held under the Constitution and the laws of the United States, and that is the election of members of the lower branch of Congress, because Senators are elected by the Legislatures. You cannot conceive of another election held under the Constitution and laws of the United States. Hence I can see no necessity for saying, in this amendment, "whenever the right to vote in any election held under the Constitution and laws of the United States." Those words are superfluous, because you are fixing only the qualifications of electors in one case under the Constitution and laws of the United States; that is, of members to the lower branch of Congress. Under the Constitution as it now stands, those electors must have exactly the same qualifications as electors of the most numerous branch of the State Legislature. Therefore, we may as well say, "whenever the elective franchise shall

be denied to the persons who elect the most numerous branch of the State Legislature," and then, of course, you have included those words "elected under the Constitution and laws of the United States."

The Senate will see what I am aiming at. I do not want to get the people of my State involved in any difficulty, nor the people of any other State, and have the probability of excluding from the basis of representation, or even to have the charge made that that is the object or intent of this thing, to exclude from the basis of representation those persons who may fail to be electors at some school election.

Mr. HOWARD. Will the Senator from Missouri allow me to make a single remark here by way of interrogatory?

Mr. HENDERSON. Yes, sir.

Mr. HOWARD. The proposition of the Senator from Missouri is this, if I understand it, that, whenever any persons shall be by the legislation of a State excluded from voting for members of either branch of the Legislature, the persons so excluded shall not be embraced in the basis of representation. Now, suppose the State should fix one sort of qualifications for the voters who are to vote for the most numerous branch of the Legislature and a different kind of qualifications for those who are to vote for the less numerous branch of the Legislature, there would be a portion of the citizens excluded in that case, would there not?

Mr. HENDERSON. The larger portion would be excluded, of course, because it applies to either branch of the Legislature. The larger number would be excluded; that is, if one half of the people were excluded from voting for State senators, of course one half would be excluded from the basis of representation; but if one half were excluded in voting for a senator and only a tenth in voting for the other House, one half would be excluded because the State excluded them in the election of senators. The larger number would always be excluded from the basis of representation.

Mr. HOWARD. Allow me to put it in more tangible form. Suppose, for illustration's sake, that the whole number in a State of male citizens over the age of twenty-one is one hundred thousand, and suppose that by the laws of the State every one of those citizens is allowed to vote for members of the most numerous branch of its Legislature, and that only fifty thousand of them are allowed to vote for members of the upper or less numerous House of the Legislature. You will see, then, that there are fifty thousand citizens of the State excluded from the right to vote.

Mr. HENDERSON. That is so.

Mr. HOWARD. Are those fifty thousand to be included or excluded from the basis of representation in Congress?

Mr. HENDERSON. Under my amendment they are excluded, because according to that they must be qualified to vote for Governor, judges, and members of both branches of the Legislature or else they cannot go into the basis of representation, My object was to carry out the principle of the section proposed by the committee, to make it apply to general, political, and judicial officers, and not to make it apply to all minor officers, because if so applied, technically, in my State it would exclude from the basis of representation two thirds of the white people of the State.

Mr. HOWARD. The Senator will see at once that his scheme does not establish any certain and fixed standard for the basis of representation; the elements entering into that basis of representation are quite uncertain and changeable.

Mr. GRIMES. In order to enable the Senators from Michigan and Missouri to come to a satisfactory understanding on this subject, I move that the Senate adjourn.

The motion was agreed to; there being, on a division—20 ayes and 7 noes; and the Senate adjourned.

RECONSTRUCTION.

The Senate, as in Committee of the Whole, resumed the consideration of the joint resolution (H. R. No. 127) proposing an amendment to the Constitution of the United States, the pending question being on the amendment of Mr. Williams to strike out the second section and to insert the following in lieu thereof:

Sec. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But whenever the right to vote at any election held under the Constitution and laws of the United States, or of any State, is denied to any of the male inhabitants of such State, being twenty-one years of age and citizens of the United States, or in any way abridged except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Mr. COWAN. I should like to ask how those persons excluded are to be ascertained; how the number of them is to be ascertained. How is it to be determined how many are excluded because they have not paid a tax within two years in my State, and how many are excluded because they have not resided in a particular district a certain length of time before voting? I suggest that these things seem to be of some difficulty in the proper determination of this question.

Mr. JOHNSON. I believe, Mr. President, that the question immediately before the Senate is the amendment offered by the Senator from Oregon to the joint resolution. Before I proceed to discuss the questions which, as it seems to me, are presented by the proposition as a whole, I beg leave to say a word upon the particular effect of that amendment. The hon-

orable member who offered it, and who I suppose offered it with the concurrence of some of his friends who are in favor of the measure as it originally stood, I think stated to us the other day that it did not substantially change the provisions to be found in the second section of the original proposition. What I suggested to him then I propose very briefly to suggest now, that perhaps in that he is mistaken; and as, in common with every Senator, I am, as I should be, desirous of having these constitutional amendments made as plain as language can make them, so as to avoid the evils sure to result from the existence of any ambiguity, I suggest that I think it will be found that the amendment of the Senator from Oregon is obnoxious to a very serious objection, and goes very much further than the original proposition for which he proposes it as a substitute. The language of the substitute, as far as the exceptions to which the general rule which it states at the same time is to be subject, is, that "whenever the right to vote at any election held under the Constitution and laws of the United States, or of any State, is denied to any of the male inhabitants of such State," &c., they are to be deducted from the number which is to constitute the basis of apportionment. The language of the original proposition was, that "whenever, in any State, the elective franchise shall be denied to any portion of its male inhabitants, being citizens of the United States, not less than twenty-one years of age, or in any way abridged," &c., then the basis is to be reduced in the proportion that the number excluded shall bear to the whole number of that age and of that sex.

Now, I think it will be found (and in that I believe I have the concurrence of several members of the Senate who are in favor of the proposition as it was originally presented) that the effect of the amendment is to change the basis by deducting from the number which is to constitute the basis, any portion of that number, of twenty-one years of age, who are citizens of the United States, who shall be denied the right to vote at any election under the constitution or laws of any State. In all the States there are elections of a municipal character that are regulated by law, and in which the franchise is different from that which prevails in the general elections of the State; and the consequence would be that where any persons who are twenty-one years of age are denied the right to vote the basis of representation is to be lessened in the proportion that the number excluded shall bear to the whole number falling within the class. I do not know what would be the condition of the State of Missouri, for example, if the amendment is to be adopted. I rather think that she would lose very materially by this amendment, in her representation; and I think the same thing would be found true of the State of Ohio, and I suppose of nearly all the States in the Union. What I suggest; therefore, to the honorable member and to the Senate is, that the phraseology of this amendment, if it is to prevail, shall be so changed as to leave it beyond doubt that all that is meant is to except out of the whole number of inhabitants of the age of twenty-one years or upward, who are citizens of the State, those who are denied the right to vote at any State election, as contradistinguished from any municipal or local election. Without such a qualification I am sure it will lead to very serious doubts, and it may lead, as those

doubts may be solved, to a very serious diminution of the representation of several of the States.

What I am about to say upon the merits of the rule itself; whether that rule is found in the amendment or found in the original proposition, will be said as briefly as I can say it, and more for the purpose of explaining to my own constituents the ground of the reasons for the vote which I propose to give than with any hope of influencing the opinions of any member of the Senate who is now in favor of the proposition. It comes before us in such a shape and under such circumstances that it is not to be expected, as I think, that those who were consulted, who deliberated upon, and who advised the measure in the form in which it stands, can be persuaded of the error of that measure in any particular by anything which may fall from a Senator who is opposed to the entire proposition.

The Constitution of the United States, as it now is, in the second section of the first article provides for the manner in which the apportionment is to be made of Representatives in Congress. It is made to depend upon the whole number of the people found in each State; and in relation to the propriety of such an apportionment there did not exist in the Convention by whom the provision as it now stands was adopted, any doubt. In the fifty-fourth number of the *Federalist*, attributed, whether correctly or not, to Mr. Hamilton — there is some doubt whether he or Mr. Madison was its author — in recommending the adoption of the Constitution to the people of the United States, and commenting upon the manner in which the apportionment was to be made, as well as the manner in which taxes were to be levied, it is said:

"It is not contended that the number of people in each State ought not to be the standard for regulating the proportion of those who are to represent the people of each State."

That rule in the same paper was said to be one "referring to the personal rights of the people, with which it has a natural and universal connection;" and the only doubt which existed in the minds of the Convention or any member of the Convention upon the subject was not whether numbers was not the true rule by which the basis was to be ascertained, but whether the slaves of the southern States should be considered as a portion of those numbers; and that doubt arose because the southern States insisted that the slaves were property, and the North, while recognizing the existence of property in slaves, thought it unjust that the slaves should be considered at all in apportioning the number of Representatives to which the States where the slaves might be found should be entitled. The result was, after quite a struggle upon the subject, a compromise, by which taxation was to be regulated and by which the apportionment of Representatives was to be regulated by counting five slaves as only equal to three freemen.

But, I repeat, neither then nor at any time since, until now, did it ever occur to anybody that in a form of government like ours the basis of representation was not to depend upon the entire number of the people to be represented; and in this amendment that is admitted to be the true basis. It provides, both as it was originally proposed by the committee by whom it was reported and as it is proposed to be amended by the honorable member from Oregon, that Representatives shall be apportioned among the several States which may be included within the Union according to their respective numbers, counting the whole number of persons in each State and excluding Indians not taxed. So that the honorable committee and the friends of this particular measure give their sanction to that as the true rule. They stand upon the ground on which our fathers stood when they adopted a rule of the same description in the Constitution, as it now stands, that numbers are to regulate representation. The only question, therefore, which the particular amendment suggests is, whether it is right to qualify the operation of that general rule as is proposed to be done by this provision.

Now, what is the qualification? Only that persons twenty-one years of age inhabiting each State, and being citizens of the United States, whose right to the exercise of the elective franchise is denied or in any way abridged, except in certain exceptions to which I shall refer after awhile, are to be deducted from the whole number, and the basis is to consist of what may remain. But the friends of the measure are not willing — I say not willing because that is not the effect of the amendment — to subject the rule which they themselves admit to be just to the general qualification which a general provision of that sort would make; and they therefore except from the operation of that qualification certain classes. Who are they? I say they except by not including, for all persons not included within this exception are acknowledged within the scope of the general rule of numbers. Now, who are to be found in the States? First, aliens; second, women, black and white, now all the blacks are free third, minors, those under twenty-one years of age, white and black; fourth, those who may have participated "in rebellion or other crimes." Then what will be the operation of the section if we adopt it? It will be that all aliens are to be represented, all women are to be represented, all minors are to be represented, and all rebels are to be represented. Why is that? This is to go before the people. How will the objection be answered, as it is certain to be made before the people, when the authors of this measure are asked, why suffer the women and minors to be

represented, why suffer aliens to be represented, and, above all, why suffer rebels to be represented, and not suffer loyal men to be represented? How will it be answered, I mean to an unimpassioned judgment; I mean to a people who it is to be hoped will not be influenced by the excitement of party passion or by the prejudices growing out of the sad conflict through which we have triumphantly come? It is to be only answered upon the ground that the provision is necessary to secure to the black man the franchise. Is that any answer? Is it any answer that because you cannot acquire for the black man the right to the franchise he is to be denied the right of being represented? Your own theory is, as it was of your fathers, that all should be represented without reference to color, the black as well as the white. The black is a freeman. That is your theory. But the effect of the exception is to deny to the black man the right of representation unless the State shall secure to him the right to the franchise.

Again, Mr. President, the measure upon the table, like the first proposition submitted to the Senate from the committee of fifteen, concedes to the States — and that was one of the grounds upon which the honorable member from Massachusetts [Mr. Sumner] voted and spoke against that proposition — not only the right, but the exclusive right, to regulate the franchise. His theory was that under the Constitution as it now stands, Congress has the authority to regulate the franchise in the States; and his objection to the original proposition, to which I have just adverted, was that, if adopted, it would surrender that right which lie supposed to exist and yet I imagine it is barely possible that he may vote for the section as it now stands; and what does it do? It says that each of the southern States, and, of course, each other State in the Union, has a right to regulate for itself the franchise, and that consequently, as far as the Government of the United States is concerned, if the black man is not permitted the right to the franchise, it will be a wrong (if a wrong) which the Government of the United States will be impotent to redress.

I see no difference, not the slightest, between the proposition as it now stands, so far as this section is concerned, and the original proposition which we rejected. I call the attention of my friend from Massachusetts, to whom I referred just now, to the language of the original proposition reported to us by the committee of fifteen on the 31st of January last. It says that Representatives shall be apportioned among the several States, &c.; "provided, that whenever the elective franchise shall be denied or abridged in any State on account of race or color, all persons of such race or color shall be excluded from the basis of representation." What does this do? The words "race or color" are omitted. Why, if I was an eastern man, I might guess; but no matter what may have been the particular motive for the omission of the words, the effect of the proposition is identical with that of the

original proposition. The former was obnoxious to the honorable member from Massachusetts because it surrendered a right which he made a very elaborate speech to prove, in his judgment, existed in the Congress of the United States to regulate the franchise, if not always, certainly in the condition in which the country now is. This accomplishes the same purpose. It says to the States, "If you exclude any class from the right to vote, we, admitting your power to make the exclusion, say it shall have no other effect whatever than to deduct the number excluded from the whole number which is to constitute the basis of representation. If, therefore, you exclude from the benefit of the franchise any who are citizens of the United States, and twenty-one years or more of age, and inhabitants of the State, who belong to any particular race, or who are of any color contradistinguished from the white man, we admit that you have a right to exclude them, and all we propose to do is to say that to the extent of that exclusion your basis of representation shall be diminished."

Now, is it not known to us all that there is not in any one of the southern States, and has not been for years, any exclusion of any white man having the age and having the residence required by the Constitution and laws of the particular State, from the right to the franchise; that the whole exclusion, where there has been any exclusion at all, has been of the free blacks, and will hereafter be of all the blacks, as all are now free? The whole operation, therefore, of the proposition before you, that part of it to which I am now addressing myself, is to say precisely what the original proposition of the 31st, of January said "You who deny to any person belonging to any race or color the right to vote shall have your representation in the Congress of the United States lessened in the proportion that the number excluded shall bear to the entire number." The manner of ascertaining the way in which the representation is diminished is changed in point of form, but the result is the same. By the original proposition of January 31 all of the race or color were to be deducted; by the proposition before us the deduction is to be in the proportion that the number excluded shall bear to the combined number of those included and excluded within the privilege of the franchise.

Let me for a minute call the attention of the body to what will be the operation of that provision. The census of 1860, and I believe that is the case with all previous censuses, does not give us the number of males of twenty-

one years of age, but it does give the number of those who are twenty years of age and upward.

Mr. FESSENDEN. Allow me to ask the Senator a question, by way of illustration.

Mr. JOHNSON. Certainly.

Mr. FESSENDEN. Suppose there are two hundred thousand male citizens in a State above twenty-one years of age, and they are all allowed to vote; then the whole two hundred thousand would be included under this proposition as the basis.

Mr. JOHNSON. Certainly.

Mr. FESSENDEN. Now, suppose the State denies the right to vote to twenty or fifty thousand of that number, the basis is reduced precisely in that proportion. The language is explicit that the basis shall be reduced in that proportion.

Mr. JOHNSON. We shall see about that in a moment. It is not the proportion that the number excluded bears to the entire number included and excluded.

Mr. FESSENDEN. No; in the proportion that it bears to the whole number of male citizens twenty-one years of age and upward.

Mr. JOHNSON. Of course that means those included and excluded. I mean the whole number twenty-one years of age and upward. Now, let us see what will be the operation of the amendment on my own State. I will take that first. In 1860, by the census, it appears that Maryland had 128,371 white males twenty years of age and upward, and that she had of the same age 38,030 black males. The percentage, therefore, that the blacks of that age bore to the whites was twenty-nine and five tenths per cent. Now, in order to make myself understood more clearly, let me turn to the words of the section. If any portion of the male inhabitants of a State twenty-one years of age and upward are denied the privilege of voting, or that privilege is in any way abridged, then "the basis of representation in such State shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens not less than twenty-one years of age." Then, what are we to do? We are to add together the number of whites of that age in Maryland and the number of blacks, and the aggregate is 166,401. Now, what says the section? That the representation of Maryland is to be diminished, if she excludes all the blacks, in the proportion that 38,030 bear to 166,401. What is that proportion? It is nearly one fourth; it is exactly twenty-two and nine tenths per cent. Let me be understood; for if such is not the purpose of the committee, I am sure they will change it. The basis of representation, in the event of an exclusion, is to be reduced "in the proportion which the number of male citizens" who are excluded "shall bear to the whole number of male citizens" not less than twenty-one. Is it not manifest, then, that we are to ascertain, first, how many white Citizens there are who are permitted to vote; second, how many citizens there are who are not permitted to vote? I assume, now, that in Maryland the whole number of black citizens who might veto with the authority of Maryland will be excluded by her authority, that number being 38,030, and the aggregate of both classes being 166,401.

Having got the entire number, what is the next step toward ascertaining the effect of the proposed amendment? To ascertain the proportion that the number denied the franchise bears to the entire number who it is assumed ought to have the right to the franchise. In other words, to apply it to the case of Maryland, the representation of Maryland is to be diminished by diminishing the basis of her representation in the proportion that the number of citizens excluded bears to the whole number, as well those who are included within the benefit of the franchise as those who are excluded. Then it is a simple question of arithmetic, what is the proportion between 38,030 and 166,101? It is nearly one fourth. The basis would be lessened twenty-two and nine tenths per cent, or in other words twenty-two and nine tenths per cent of 166,101 would be deducted from that aggregate number. What would be the result of that? The result would be the loss of one Representative, Maryland now having five, and possibly, by force of the fraction, the loss of another, but certainly the loss of one.

But it is a great deal worse in other States — a thousand times worse. I refer now to the same table furnished by the census of 1860. I shall not trouble the Senate with it, except to call their attention to two or three of the other southern States, and then to two or three of the northern States by way of comparison. The number of white male citizens twenty years of age and upward in the State of South Carolina when this census was taken was 68,154. The number of black males of the same age at the same time was 92,923, being a percentage of fifty-seven and six tenths of the aggregate. Here, then, the black males were more numerous than the white males above twenty. What is to be done in South Carolina? You add together the number of whites and the number of blacks, and if the blacks are not permitted to vote, as they are not, then you deduct from the basis of representation such an amount as may be ascertained by ascertaining the proportion that the number of blacks bears to the aggregate number of whites and blacks, and what is that? As 92,923 is more than 68,154, South Carolina loses at least one half of her representation, and in fact she loses more. It is sufficient for my purpose to

show that she loses one half.

Go to Mississippi and the result is nearly the same. Her white males above twenty were 84,338, and her black males of the same age 98,510, being a percentage of fifty-three and eight tenths of the whole. So that State would lose half her representation.

Now, Mr. President, how will the rule proposed operate on the northern States? The people of the northern States are, and are correctly assumed to be, just and fair. How does it operate on the State of my friend the chairman of the committee of fifteen, [Mr. Fessenden?] Her whites of twenty years of age and upward in 1860 were 167,724 and her blacks of the same age were 362, a percentage of two tenths of one per cent. His State will not suffer by this provision, it is certain. Then go to the State of my friend from New Hampshire, [Mr. CLARK.] They had 91,944 white males above twenty and 149 blacks, a little over one tenth of one per cent. It is obvious that neither of these two States will lose anything by this rule. I need not fatigue the attention of the Senate by calling their attention to the other northern States. Gentlemen diminish our representation unless we consent to surrender our own judgment of what we believe to be true policy, and they leave their own untouched. It is a ruinous result as far as we are concerned; it is a perfectly harmless result as far as they are concerned. How is it in the State of my friend from Michigan, [Mr. Howard] who has had more especially the charge of this measure since it came from the last special committee?

Mr. CLARK. Do you mean the committee of fifteen?

Mr. JOHNSON. There was but one committee of fifteen; but I believe, or at least it is shrewdly suspected, that there has been another committee.

Mr. CONNESS. What does the Senator know about that?

Mr. JOHNSON. I guess again, and I guess that my friend from New Hampshire [Mr. CLARK] has some knowledge of it. The State of Michigan, in 1860, had 200,474 white males of twenty and upward, and only 1,898 blacks of the same age, being a percentage of eight tenths of one per cent.. There is no terror in the operation of this clause upon my friend from Michigan, whose State will have at least as many Representatives as she has now, even if she stops growing. Ours is to be diminished; hers, at least, is to remain as it is, to be changed only by an increase of her population. Every man in Michigan, every woman in Michigan, every alien in Michigan, every rebel in Michigan, (if they have rebels there,) is to enter into the calculation of the number which is to constitute the basis of representation of Michigan. One fourth of our aggregate male population is to be deducted, more than one half of that of South Carolina and Mississippi is to be deducted. Now, what is it all for? What is the purpose of the exception? There can be but one.

In Maryland we have a contest now going on, which, as I judge from the newspapers, is supposed by one side to involve the question of negro suffrage, and upon the other side to be wholly irrespective of that question. What is this provision for? Is it not to force negro suffrage upon every State by holding out a punishment, or a provision in the nature of a forfeiture, to any State that denies it? Does it not say to the State of Maryland, "You are now represented in the councils of the nation by five Representatives in the House of Representatives; but you shall in future, when this provision goes into operation, be represented only by four, unless, contrary to your judgment, contrary to your past policy, contrary to what all parties among you allege to be your present conviction, you agree to admit to the right of suffrage your black population who are of the age of twenty-one years and upward?"

The effect, therefore, of the measure which

I am discussing, and of course its purpose — for gentlemen of the intelligence of those who are friends of this measure must be supposed to know what its effect is and to design to bring about in some way or other some change in the politics of the State — the effect is to strip the South of a portion of her representation unless she will agree to change her suffrage laws. I do not know that the South would adopt — I am sure that it ought not to adopt — the course which I am about to suggest; but suppose that the moment this provision is adopted they admit their blacks by law to the right of suffrage; then their representation will not be diminished. Suppose that when the representation has been apportioned on this basis, they repeal those statutes. The right to do either cannot be denied. The right to do the first is conceded by the proposition before us, and the power which includes the right to do the first necessarily includes the right to do the other. Are you going to change the number of Representatives of those States just in proportion from time to time as the suffrage may be extended or diminished? If that is the object, we shall be in a state of constant turmoil. Why should it be so? What can the northern States apprehend from having the States of the South represented as the Constitution now provides? What, gentlemen, are you afraid of looking at your own section?

What now is the whole number of Representatives? The whole number of Representatives in the other House, under the apportionment made after the census of 1860, in virtue of the act of March 4, 1862, and other acts, is two hundred and forty-two. Of that number what were denominated as free States before slavery was abolished are entitled to one hundred and fifty-seven, and what were known as the slave States eighty-five, showing an excess of Representatives on the part of free States over those from the slave States of seventy-two. In other words, if the States were all represented now as they were represented before the rebellion commenced, there would be a clear majority of Representatives upon the part of the northern States of seventy-two. Then it is an insult to those States, it is to impeach the integrity of their Representatives now in Congress or who may come into Congress at any time hereafter, to suppose that with such a majority as that the respective interests of their States, if such interests shall be supposed to conflict at all with the interests of all the States, will not be protected. It is to tell the country that you doubt your own ability: you, with one hundred and fifty-seven Representatives, doubt your power to cope in the councils of the nation with eighty-five Representatives from the southern States; to tell them consequently that although your majority is a majority of seventy-two, you are apprehensive that in some way or other the South may get the control of the Government. What a reflection upon yourselves! I was about to say, how dishonoring to yourselves, if such an apprehension is entertained, is such an apprehension. What an imputation it is upon the wisdom and the firmness and the patriotism of your own people. What a strong and startling fact will it be considered and be used by those who question the ability of the people to govern themselves, that their representatives upon this floor wish to guard by constitutional amendment their being injured by the efforts of eighty-five men coming from the southern States against one hundred and fifty-seven men coming from the free States. I invoke honorable Senators to be as firm, as decided, and as energetic in defending the interests of their respective States in the councils of the nation as they and their people have discovered themselves firm and energetic in defending the interests of the whole upon the battle-fields of the late struggle. Do not show the white feather now. Do not, above all, say to your fellow-countrymen and to the world, "We are not the equals of the men of the South when we are brought together in the councils of the nation." You do not think so, I am sure; certainly I do not think so, and never have thought so; but I invoke you, as a friend, not to interfere with the rights secured to the southern States now by the Constitution which our fathers gave us, upon the pretense, utterly without foundation, that the rights of your respective States will be subjected to the slightest peril by continuing the representation as it stands.

Mr. President, I have now said all that I propose to say upon the operation of the second section as it was originally presented to the Senate and as it is proposed to be amended by the honorable member from Oregon, and having upon a former occasion submitted all the remarks that I deem it necessary to submit in relation to the third section of the original proposition, which I do not understand it is proposed to alter —

Mr. WILLIAMS. I understood the Senator to say that he had proposed to make some remarks upon the amendment that I offered.

Mr. JOHNSON. So I did.

Mr. WILLIAMS. With the permission of the Senator I will state here that the amendment which I offered I find is subject to some verbal criticism which is plausible, but I do not think well founded. I find it so easy to remove the difficulty that, upon consultation with the committee and the other friends of the measure, I propose to strike out certain words and substitute others which will, perhaps, obviate some of the objections of the Senator.

Mr. JOHNSON. I had said all I propose to say upon it.

Mr. WILLIAMS. I propose to modify it by striking out the words

But whenever the right to vote at any election held under the Constitution and laws of the United States or of any State--

And to insert the words:

But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a State, or members of the Legislature thereof.

Specifying particularly the officers for which these people must be allowed to vote in order to be counted.

Mr. JOHNSON. That removes some of the objections to which I supposed the original proposition was subject; and that shows how exceedingly cautious we should be in these constitutional amendments; how very difficult it is to change the Constitution of the United States for any good purpose; and I mean by purpose, for the accomplishment of any good end. Now, what is the history of this attempt? At the beginning of the session a joint committee of fifteen was appointed to take into consideration the proper measures to be adopted, and they reported, first, the proposed amendment of the Constitution, of the 31st of January. That was rejected. They

reported next, as a second plan, on the 10th of May, 1866, one article consisting of five sections; and here it lay for several days, when it went through an examination elsewhere, and the result was the report made by the honorable member from Michigan on the 20th of May last. Almost the entire thing has been changed since; and here is my friend from Oregon, who, yesterday or the day before, after bringing all the acuteness which belongs to him to the examination of the second section as proposed by the committee, and after calling, no doubt, other friends of the measure to aid him, introduced his substitute for the second section; and only two days have gone by when he has become satisfied that he was wrong.

Mr. WILLIAMS. No, sir.

Mr. JOHNSON. Or, if he has not, he has not been able to satisfy his friends that he is right; which is pretty much the same thing; and he says very frankly that he proposes to amend it. Sir, without meaning to disparage the members of the Senate of the United States, or the men of the present age found in the public councils, either of the States or of the United States, I have a very shrewd suspicion that we are not the superiors of the men who formed the Convention that adopted the Constitution.

Mr. WILLIAMS. I beg to ask the honorable Senator whether the members of the Convention which originally formed the Constitution of the United States, with all their wisdom, did not have about as much difficulty in making the Constitution as we have in agreeing upon amendments?

Mr. JOHNSON. I know they had; but they accomplished it and it was adopted; and they took a great while to do it, and they did it, not in the midst of a political excitement. No presidential election was looming in the distance or near at hand. No contest for political power, as is about to come off even in the present year. A nation was to be created by means of their wisdom, and a nation they did create, awful in war, happy and conservative in peace. Now we are about to change it in a vital particular, even by the very amendment of the honorable member from Oregon, to change the basis of representation as they established it, although such a man as Hamilton, in the number of the Federalist to which I have adverted, said that not a member of the Convention doubted that that was the proper basis. Upon that they had no difficulty. They said that, according to the republican theory upon which the freedom of the people of the United States was supposed to rest, all ought to be represented. Now it is proposed to deny the right to be represented of a part, simply because they are not permitted to exercise the right of voting. You do not put them upon the footing of aliens, upon the footing of rebels, upon the footing of minors, upon the footing of the females, upon the footing of those who may have committed crimes of the most heinous character. Murderers, robbers, house-burners, counterfeiters of the public securities of the United States, all who may have committed any crime, at any time, against the laws of the United States or the laws of a particular State, are to be included within the basis; but the poor black man, unless he is permitted to vote, is not to be represented, and is to have no interest in the Government. Why, sir, my friend from Massachusetts [Mr. Sumner] has over and over again said that the State governments, even as they existed before the rebellion, and as they now exist, are not republican governments, and that we should change them by virtue of the obligation imposed upon the Government of the United States to guaranty to the people of each State a republican form of government. What more anti-republican doctrine, looking to the genius of our institutions, can be imagined than that which says that there may be within the limits of any State a people who are not to be represented? The war of the Revolution was not waged because of the miserable tax which England imposed, but because she claimed the right to tax those who were not to be represented; in other words, because the colonies had no representation in the Parliament of England. And yet you tax the freedman; the States tax the freedman; you subject the freedman to the authority of both, while at the same time you say, "You may not be represented, and it is not our purpose to secure a representation to you. Everybody else is to be entitled to the benefit of the doctrine that there shall be no taxation without representation, but you are to be an exception."

Mr. CONNESS. Because you are disfranchised.

Mr. JOHNSON. Because you are disfranchised! So are women disfranchised; so are rebels disfranchised; so are children disfranchised; so are the Chinese in California disenfranchised. Why do you want to represent them? You have them all represented under this amendment. I have had occasion before to state what I supposed to be the clear misapprehension of this doctrine. The honorable member seems to suppose that representation and the franchise are identical. They are as different as light from darkness. The Constitution says so; your own amendment proclaims it. You

Hamilton, in the Federalist to which I have referred, that was a personal right, which, upon the theory of our institutions, ought to be secured, and just in proportion as it is denied just in that proportion are you trampling upon the theory or violating the theory.

Now you want, I suppose, whatever you do to be adopted. Do you suppose that the States who are to lose representation by this measure, unless they agree to bring about the contingency which it is to avert, will adopt this amendment?

Mr. CONNESS and Mr. WILSON. We do.

Mr. JOHNSON. Then you misapprehend the southern people just as much as you did before the war commenced. I do not mean you gentlemen individually. There was an impression at the North that the South was not in earnest. There was a corresponding impression at the South that the North was not — both fatal errors; the first just as fatal as the last. I say the South will not adopt it, because your people, if you were in a condition in which your rights would be so affected by this amendment as will be its operation upon the rights of the South, would not adopt it. Massachusetts never would agree to an amendment which was to deprive her of a part of her representation unless she would consent to abandon a policy which she had adopted from the beginning of her existence. And yet you ask us to do it. The whole effect and the whole object — I have a right to say that, because that is the whole operation of the amendment — the whole effect of the proposed amendment is to strike a blow at the southern States who are now, according to my theory, in the Union, and who are in this Union upon the theory of this amendment, unless they will agree to a policy at war with the policy illustrated throughout their entire history.

What more do you do? By the third section you exclude from the right of holding any office, State or Federal, a class which will be found to embrace the best men within the limits of these States. Do you suppose that the South will agree to that? There may be a few men imported there from some of the eastern or northern States, who have gone there lately, who will consent to it; but the original southern men will never consent to a constitutional amendment which strikes at a large class, indeed, of the entire class within which is to be found the best men and the wisest men within their limits.

Mr. McDOUGALL. Do I understand the Senator say that, they include all the best men and the wisest men of the South?

Mr. MUNSON. Some of the best and wisest; I did not mean all.

Mr. McDOUGALL. I understood you to say all.

Mr. JOHNSON. It includes nearly all, because nearly all of them have been in the Legislature or Congress or held some official station; and all who have held any office of any description, civil or military, under the United States, or under any State, who have been members of Congress or officers of the United States or members of any State Legislature or of any executive or judicial office of any State, and have taken the oath to support the Constitution as they must all have done, are to be excluded from the right to hold office.

Mr. McDOUGALL. I apologize; I did not understand the Senator.

Mr. JOHNSON. It is not necessary to apologize, I will say to the honorable member from California, because he hardly ever says any thing that requires an apology, certainly as far as I am concerned.

I have upon more occasions than one, Mr. President — and I now barely allude to it — stated what I thought to be the present condition of the southern States. The rebellion being ended, in my view the Constitution of the United States and its laws are just as operative upon each of the States where the rebellion existed as they were before it was commenced. All of those States now are organized; all of them, I believe, except perhaps Texas, have their judiciary, their executive, and their Legislature, and they are now in the undisturbed exercise of the functions of each of these departments — and the three embrace everything that a State has a right to do — and they are organized upon republican principles. The Supreme Court of the United States recognizes them as existing States. The Executive of the United States recognizes them as existing States. This very amendment (for there is nothing on the face of it which excludes the necessity of appealing to the States which have been in rebellion to adopt it) recognizes them as existing States.

Now, what are their rights under the Constitution as it stands? The Constitution provides that a census shall be taken at periods of every ten years. You took your census in 1860, and the apportionment was made under the act of 1862. What is there to change that, looking at the Constitution as it is? The very purpose of the provision directing an enumeration of the inhabitants of the States to be taken at each period of ten years was to ascertain the number of the people in each of the States that was to constitute the basis upon which the number of Representatives from each of the States was to be ascertained. That was done by force of the act of 1862, under the census of 1860. Now you propose to change it, and to change it by force of constitutional provision. Why

cannot you wait? Why is it not right and just that you should wait until those States are represented in this Chamber and in the other House? Your fathers consulted them, and the weight of their patriotic wisdom in forming the Constitution of the United States was universally admitted, and is known to us historically. Why cannot you wait now? On the contrary, you now deny them the right to appear upon this floor, although they are willing to take the oath of loyalty which you have prescribed; and you undertake to submit a proposition for a change of the Constitution in their absence. How can you know but some man of the South might be found in the councils of the nation who would influence your councils and shape your deliberations as Madison influenced the council and shaped the deliberations of his associates in the Convention of 1787? Do you not want aid? I should think so. You have not been able yet to agree on any provision for a change which has satisfied you even for a passing day.

Mr. President, I have here — and have alluded to the condition of these States simply for the purpose of introducing it and bringing it before the Senate — an opinion delivered by one of the judges of the Supreme Court very recently, who is one of the admitted lights of that great tribunal, whose patriotism has never been questioned, and cannot properly be questioned, in a case which involves the question, what is the condition of the States? A man by the name of Egan was confined in the State penitentiary at Albany, he never having been in the military service of the United States or of the confederate States, under a sentence by a military commission held in the State of South Carolina to try him upon the charge of murder, and the sentence of the commission was confinement in that penitentiary for life. He made an application to Mr. Justice Nelson for a *habeas corpus*. The facts were returned, and the judge in the conclusion of his opinion says, what I think bears upon the question I am discussing, what I will read:

"For aught that appears, the civil local courts of the State of South Carolina were in the full exercise of their judicial functions at the time of this trial, as restored by the suppression of the rebellion, some seven months previously, and by the revival of the laws and reorganization of the State government in obedience to and in conformity with its constitutional duties to the Federal Union.

"Indeed, long previous to this, a provisional governor had been appointed by the President, who is Commander-in-Chief of the Army and Navy of the United States, (and whose will under martial law constituted the only rule of action,) for the special purpose of changing the existing state of things and restoring civil government over the people. In pursuance of this appointment a new constitution had been formed, a Governor and Legislature elected under it, and the State in the full enjoyment or entitled to the full enjoyment of her constitutional rights and privileges.

"The Constitution and laws of the Union were thereby acknowledged and obeyed, and were as authoritative and binding over the people of the State as in any other portion of the country. Indeed, the moment the rebellion was suppressed, and the government growing out of it subverted, the ancient possession, authority, and laws, resumed their accustomed sway, subject only to the new organization or the appointment of proper officers to give to them operation and effect.

"This reorganization and appointment of the public functionaries, which was under the superintendence and direction of the President, as Commander-in-Chief of the Army and Navy of the country, who, as such, had previously governed the people of the State from imperative necessity by force of martial law, had already taken place, and the necessity no longer existed."

Let me repeat a sentence of that decision. The judge says that the State of South Carolina, at the time this trial was had, was "in the full enjoyment, or entitled to the full enjoyment, of her constitutional rights and privileges." One of those rights and privileges was that of being represented in this body and represented in the other House. Now, we keep them out, unless they think proper — at least I suppose that is the course the matter is to take — unless they will submit to adopt a measure which is contrary to what we know they would do if they were not by compulsion forced to take it.

Mr. President, I have but a word to say in conclusion. We all have an interest in the peace of the country. We have a deep interest in the peace of the country because it is connected with the prosperity and good name of the country. We have a social interest in being together again as brothers, of presenting to the nations of the world ourselves as one, and exhibiting the characteristics of a great and magnanimous people, who, forgetting recent animosities, discarding the prejudices out of which they grow, and looking to the honor and glory of the nation, come together as brothers, one and all. By the highest of moral considerations, therefore, the termination of the present state of things is demanded. But if we cannot raise ourselves to the elevation of being governed by moral considerations, let mere material considerations animate us; let interest, in its most vulgar sense, control us. Let

us, therefore, bring back the South so as to enable her to remove the desolation which has gone throughout her borders; restore her industry; attend to her products — those products which enter so materially into the wealth of the whole, so important to the North, and more important, if possible, to the North than to the South, but all-important to the nation — instead of keeping her in a state of subjection, of dishonoring subjection, and, as I think, without the slightest necessity. Peace once existing throughout the land, the restoration of all rights brought about, the Union will be at once in more prosperous existence than it ever was; and throughout the tide of time, as I believe, nothing in the future will ever cause us to dream of dissolution, or of subjecting any part, through the powerful instrumentality of any other part, to any dishonoring humiliation.

Mr. McDOUGALL. It is a work of labor to speak after the eloquent remarks of the Senator from Maryland, who has better expressed what I think than I can express it in any form of words; and yet I think it is due to myself and the opinion I represent (for I think I represent the opinion of my own country) that I should say a few words. They will not be many.

There is an intense love for the Union throughout all the country; there was an intense love of the Union in my own country, and there is today, not governed by any form of words, but governed by principles and a high sense of right and justice. I do not care to reason about this thing. It has been reasoned about by eminent men, men who can discourse better than myself, to whom I submit the authority of the argument; but I wish to say that

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throughout all the States that belong to this Union there has been always a preponderating loyal sentiment, in the South as well as in the North. Two thirds of the people of the South loved our flag, and hailed it in Tennessee as well as elsewhere. These things have not been well observed. They should have been well observed. The observation has been neglected because for this, that in some departments of New England they thought they were the loyalest of them all. It has been the pride of my life to have lived among all these peoples, and from the South, East, West, and North all were loyal. The accident of controversy changed the condition of society and changed positions in States. I witnessed it. It was witnessed by all men who were observant men. I regretted it, for I thought the South were in error, and I always have. The majority of the people of the South are loyal to the banner of our country, always were. This was not known or recognized well in the North, because they were ignorant of the fact. I was not ignorant of the fact, for I was conversant with it.

In the tribulation of a war, with the chances of battle and the chances of sudden death, men differed, and some went one way and some went another. Thus does it always happen in all great civil controversies. I believe there is as much regret today in the South as there is in the North for the great error in which they indulged. Gentlemen seek now what is called reconstruction. There is no such thing as reconstruction. There may be rehabilitation. We may take them to our own house at home, those who wandered away, and again embrace them as brothers. That is a duty imposed upon us by the highest laws and the highest principles that govern the conduct of persons among the best classes of mankind.

I do not please to discourse, for all that there is in and about the subject-matter of the present controversy has been discussed with carefulness by men whom I will admit to be my masters. I cannot advise the Senate nor can I instruct them in any form of words; yet it is my duty in my place to state my solemn convictions.

This whole measure is supplying the foundations of our institutions. If I have not forgotten myself, wise men built the foundations; wise men built the superstructure, wise men had to do with all that belongs to its edification. If I have not been badly instructed, tinkers have taken the hands and undertaken to do what their fathers would not dare to do, what I with the instructions I have had would not dare to do. It has been said that "fools rush in where angels fear to tread." It has seemed to me that that was the habitude of men who think they are fit to be Senators of a great nation. If I differ with them in opinion I ask their pardon for the difference. We have got a great work to do. The nations are at war. France and Austria and France and Italy are at war. We not a long time hence will be at war with our legions in the field. These things will happen, and they have to be looked at with a bold eye and a firm front. These things are not to be disguised. Why is Maximilian now today maintained as the house of Hapsburg in Mexico? A trick of political strategy, a trick alone, nothing more, nothing less. He has to leave Mexico absolutely; and why has it not been done? Permit me now to say it is the fault of our own Government, for had it been said by the officer who has charge of the foreign relations of this Government, "*Noli me tangere*," there would have been no occupation of Mexico by Maximilian, or the house of Austria, or Louis Napoleon. These things have to be corrected, and they have got to be corrected by the stern will and the determined force of the men of the country wherein I was born, whose interests I intend to maintain.

Again, Mr. President, there are other questions — and as I am speaking I am not making a speech, but I am

talking — I may ask, what about the trouble on our northern frontier, and what about that trouble in Ireland?

Mr. CLARK. The Fenians!

Mr. McDOUGALL. Yes, the Fenians. I know something about 1745, and I know something of Vinegar Hill. Now, I will say that in my judgment the less we have to do with that the better.

But, Mr. President, we have got to look with great carefulness at the question pending this matter of reconstruction, so called. I do not say reconstruction; I say rehabilitation. These men of the South are, after all, our own brothers. Why should we call them enemies? Is it because we are afraid of them? Is it from a cowardly spirit? Why should we be afraid of them? Why not invite them into our own house? I say to them, come back to our house and sit down with us and dine with us and enjoy our hospitalities. Those who are not willing to say that are violating a great law of truth and a great law of justice, and those who undertake to maintain such a position must themselves be subjugated. I am opposed to subjugation, have been always, but if subjugation has to come, there have been inquiries, who is to be subjugated? I have lived in pretty near all portions of this Republic, and I will not allow the conquered to be subjugated as long as I can spell my own name and dare to call myself by my own *nomen*. These men were, by the exact contract of the Government, invited to come back and enjoy their rights. They accepted the proposition. When Lee surrendered it was an acceptance of the proposition. By whom is it denied? By brave men? No. Why should they not come back and grasp our hands and say, "We were brothers once; we differed years ago; now we come back to embrace you?" Why should we not accept their embrace? Can any man state why? It is not within the range of thought for expression to state it.

I went down once on the Mississippi, at the opening of this war. I met a general of the confederate army, and I took him by the hand, and took him to my stateroom, on board of my gunboat. Said he, "General," throwing his arms around me, "how hard it is that you and I have to fight." That was the generosity of a combatant. I repeated to him, "It is hard," and he and I drank a bottle of wine — or two just as like as not. [Laughter.] This thing of bearing malice is one of the wickedest sins that men can bear under their clothes. I think the general of the confederate army who said that to me — he was an old acquaintance of mine — showed more gallantry in saying it than any person shows who curses them. I took him to my room and treated him kindly. We would have fought at the instant, if it had been a fight, but not being a fight we treated each other generously.

I am for reintegration as soon as possible. No, I do not like that term "reintegration." I prefer the term rehabilitation, which was given to us by the Senator from Pennsylvania, [Mr. Cowan.] I say let us rehabilitate them as soon as possible and make them friends and brothers. Otherwise we make them enemies; and for what cause? There is no cause. We are all capable of faults. Who is there that is not? There is a lesson, I believe, taught by the Master: "Let him that is without sin cast the first stone." Wickedness belongs to all people that have got bone and nerves and will.

I say this measure is wrong radically, and I say further, it is my opinion that white men of the Caucasian race were made for governors, and that negroes are only fit to be a subject race. I do not care for their subjection here. I wish for them all to be free and away. Nevertheless, not with my consent, not by any force which I can employ, shall they be allowed to have to do with governing me or my kindred. That is one reason why I oppose the whole principle of the measure, and if I fall down, I will fall like Caesar.

Mr. HENDERSON. I propose to discuss the first section only so far as citizenship is involved in it. I desire to show that this section will leave citizenship where it now is. It makes plain only what has been rendered doubtful by the past action of the Government. If I be right in that, it will be a loss of time to discuss the remaining provisions of the section, for they merely secure the rights that attach to citizenship in all free Governments.

Justice McLean, in the Dred Scott case, said:

"Being born under our Constitution and laws, no naturalization is required, as one of foreign birth, to make him a citizen. The most general and appropriate definition of the term citizen is a 'freeman.'"

So the learned judge held that "Dred Scott," having his domicile in a State different from that of the defendant, and being a freeman, is a citizen within the act of Congress, and the courts of the Union are open to him.

From his argument it follows that any person, black or white, born upon the soil of a State, is a citizen of that State, unless he be born in slavery, and if he be born a slave, he becomes a citizen so soon as by the laws of the State he becomes a free man. His opinion leads to the conclusion that citizens of States are necessarily citizens of the United States. All born on the soil free are citizens of the respective States of their birth, and therefore citizens of the United States. Those born on foreign soil, he holds, cannot be invested with rights of citizenship without naturalization.

He says further:

"While I admit the Government was not made especially for the colored race, yet many of them were citizens of the New England States, and exercised the rights of suffrage when the Constitution was adopted."

Judge McLean might have gone further and enumerated other than New England States that acknowledged the citizenship of African freemen at that date.

All remember the opinion of the supreme court of North Carolina, delivered by Judge Gaston, and reported in the case of State vs. Manuel, 4 Dev. & Bat. 20. He said:

"According to the laws of this State, all human beings within it, who are not slaves, fall within one of two classes. Whatever distinctions may have existed in the Roman laws between citizens and free inhabitants, they are unknown to our institutions. Before our Revolution, all free persons born within the dominions of the King of Great Britain, whatever their color or complexion. were native-born British subjects; those born out of his allegiance were aliens. Slavery did not exist in England, but it did in the British colonies. Slaves were not in legal parlance persons, but property. The moment the incapacity, the disqualification of slavery was removed they became persons, and were then either British subjects or not British subjects, according as they were or were not born within the allegiance of the British King. Upon the Revolution, no other change took place in the laws of North Carolina than was consequent on the transition from a colony dependent on a European king to a free and sovereign State. Slaves remained slaves. British subjects in North Carolina, became North Carolina freemen. Foreigners until made members of the State, remained aliens. Slaves manumitted here became freemen, and therefore, if born within North Carolina, are citizens of North Carolina, and all free persons born within the State, are born citizens of the State. The constitution extended the elective franchise to every freeman who had arrived at the age of twenty-one and paid a public tax; and it is a matter of universal notoriety that under it free persons, without regard to color, claimed and exercised the franchise until it was taken from free men of color a few years since by our amended constitution."

Judge Curtis, in his dissenting opinion in the Dred Scott case, says: "To determine whether any free persons descended from Africans held in slavery were citizens of the United States under the Confederation, and consequently at the time of the adoption of the Constitution of the United States, it is only necessary to know whether any such persons were citizens of either of the States under the Confederation. Of this," he said, "there can be no doubt."

At the time of the ratification of the Articles of Confederation free native-born inhabitants of the States of New Hampshire, Massachusetts, New York, New Jersey, and North Carolina, though descended from African slaves, were not only called citizens of those States, but such of them as had the other necessary qualifications possessed the franchise of electors on equal terms with other citizens.

In conclusive proof of his reasoning on this subject Judge Curtis cites the action of Congress when framing the Articles of Confederation. The fourth article, it will be remembered, provides "that the free inhabitants of

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each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States." While this provision was under consideration, June 25, 1778, the South Carolina delegates moved to insert the word "white" after "free" and before "inhabitants," thereby securing the privileges only to white persons. The motion was voted down by eight States to two, one State being divided. This proves beyond doubt that the privileges and immunities of citizenship were at that time willingly accorded to all men who were free, who were not slaves, whether white or black.

Judge Curtis, after stating that in five States at least free negroes enjoyed the elective franchise when the Constitution was adopted, concludes very justly that they became "citizens of the new Government," and "so in every sense part of the people of the United States," and "among those for whom and whose posterity the Constitution was ordained and established."

"There can scarcely be a doubt that all persons residing in the several States at the time of the adoption of the Federal Constitution became citizens of the United States, and no State thereafter can deprive them or their posterity of this right. The power to naturalize is exclusive in Congress, and the foreigner naturalized becomes a citizen of the United States, and necessarily is a citizen of the State in which he is domiciled. The posterity of such foreigner so domiciled becomes a citizen of the State and of the United States by virtue of his birth alone."

If the opinion of Judge Curtis be open to criticism at all it consists in the conclusion to which he arrives—

"That it is left to each State to determine what free persons born within its limits shall be citizens of such State, and thereby be citizens of the United States."

He leaves the inference that Federal citizenship may be given or taken away by State action. He admits that being a State citizen confers the Federal right. If once the character of citizen of the United States attaches, no State, I apprehend, can take it away. This error of Judge Curtis is shown in the opinion of the court in the same case where it is said:

"If persons of the African race are citizens of a State and of the United States, they would be entitled to all of these privileges and immunities in every State, and the State could not restrict them: for they would hold these privileges and immunities under the paramount authority of the Federal Government, and its courts would be bound to maintain and enforce them, the constitution and the laws of the State notwithstanding."

Story, in his Commentaries on the Constitution, says:

"A person who is a naturalized citizen of the United States by a like residence (tho same required of native-born) in any State in the Union, becomes *ipso facto* a citizen of that State."— 2 *Story*, secs. 1693 and 1694.

In another place he says:

"It has always been well understood among jurists in this country that the citizens of each State constitute the body-politic of each community, called the people of the States, and that the citizens of each State in the Union are *ipso facto* citizens of the United States."

Rawle, in his work on the Constitution, page 86 uses the following language:

"The citizens of each State constituted the citizens of the United States when the Constitution was adopted. The rights which appertain to them as citizens of those respective Commonwealths accompanied them in the formation of the great compound Commonwealth which ensued. They became citizens of the latter, without ceasing to be citizens of the former: and he who was subsequently born a citizen of a State became at the moment of his birth a citizen of the United States."

Chancellor Kent says:

"If a slave born in the United States be manumitted, or otherwise lawfully discharged from bondage, or if a black man be born within the United States and born free, he becomes thenceforward a citizen."—2 *Kent's Commentaries*, fourth edition, p. 257, note.

Chief Justice Taney, delivering the opinion of the court in the Dred Scott case, says:

"It is true every person, and every class and description of persons, who were at the time of the adoption of the Constitution recognized as citizens in the several states, became also citizens of this new political body."

This opinion, then, concedes to all members of the several State communities, and to those who should afterward, by birthright or otherwise, become members thereof, all the personal rights, privileges, and immunities guaranteed to citizens of this "new Government." In fact, the opinion distinctly asserts that the words "people of the United States" and "citizens" are synonymous terms." They both describe the political body, who, according to our republican institutions, form the sovereignty, and who hold the power and conduct the Government through their representatives.

The great error into which Chief Justice Taney falls consists in the fact that he arbitrarily excluded all negroes, though free, from this sovereignty. He unfortunately rejected the text of the Constitution itself, and sought judicial light in what he erroneously supposed to be "the legislation and histories of the times." Instead of construing a plain instrument as its language directed, in order to secure freedom and happiness to those who made it and their posterity, he went back seventy years to explore "the State of public opinion" which then existed in "relation to" what he termed "that unfortunate race," (the negroes,) and came to the conclusion that for more than a century before that time they had been regarded by civilized and enlightened nations "as beings of an inferior order and altogether unfit to associate with the white race, either in social or political relations, and so far inferior that they had no rights which the white man was bound to respect." He entirely ignored the fact that in many of the States at that time free negroes enjoyed every privilege and immunity of citizenship. Indeed, the fact is perfectly clear, established beyond all question by "the legislation and histories of the times," that free negroes, in both free and slave States, enjoyed full citizenship, and yet Judge Taney says "it cannot be supposed that they intended to secure to them rights and privileges and rank in the new political body throughout the Union which every one of them denied within the limits of its own dominion." In forming his opinion he abandoned the Constitution and the Declaration of Independence, for he distinctly says "the general words contained in the Declaration would seem to embrace the whole human family, and if they were used in a similar instrument at this day would be so understood." He distinctly admits that he put aside these words, as a part of the history of that

period, and based his conclusions upon a certain supposed state of feeling which in reality did not then exist — upon something which he called history, but which was really a perversion of history.

He admits that the Constitution was made for those who framed it and their posterity; in other words, that "every class and description of persons" recognized as citizens in the several States became a part of the political body known as "the people of the United States." This would clearly include the free negroes who enjoyed the full rights of citizenship in nearly half of the States of the Union at that time. Being citizens, then, of their respective States, they necessarily became citizens of the United States, and having become citizens of the United States, no State can divest them of that high privilege. No power inferior to the national sovereignty could deprive them of United States citizenship. They therefore remained citizens of the States in which they might reside, and when they desired to remove from one State to another they had a right to claim in the State of their domicile the privileges and immunities of "citizens in the several States."

Sargent, in his work on Constitutional Law, at page 111, commenting on the clause giving jurisdiction to the Federal courts between citizens of the different States, says:

"This citizenship means a residence or domicile in a particular State by one who is a citizen of the United States."

We have now seen that each judge in the Dred Scott case and all the commentators assert that State citizenship by the adoption of the Constitution became Federal citizenship; and Mr. Sargent says that when one is naturalized he becomes a citizen of the United States, and a residence or domicile in a State gives him State citizenship.

The Federal Constitution failed to define United States citizenship, and equally failed to declare what classes of persons should be entitled to its privileges. If those persons who enjoyed "all the privileges and immunities" of State citizenship at the adoption of the Constitution were not by the Constitution made citizens of the United States, it would be difficult to ascertain who were to be considered such. To deny it in such cases would lead to a total denial of such a thing as United States citizenship at all. But that cannot be the case, for, in defining the qualifications of a Representative in Congress, the Constitution requires that he shall "have been seven years a citizen of the United States." The same instrument, prescribing the qualifications of a Senator in Congress, declares that he "shall have been nine years a citizen of the United States." It is also fixed in the instrument that no person shall be President except a "natural-born citizen or a citizen of the United States at the time of the adoption of the Constitution." These clauses show that such a thing as United States citizenship existed at and prior to the time when the Constitution was adopted. Another curious fact may be seen in this, that while the Senator and Representative must be a citizen of the United States at the time of their election, it is only necessary that they be "inhabitants" of their respective States. One may be a Senator or Representative in Congress before he has acquired the rights of citizenship in his State. But he must have once been a State citizen. For instance, if an individual, seven years before the adoption of the Constitution, had been recognized a citizen of one of the States, acquiring the right either by birth or by naturalization therein, and had continued to remove from one State to another, failing to remain in any one of them long enough to acquire "all the privileges and immunities" of a citizen therein, he would yet have been a citizen of the United States and eligible to a seat in Congress from the State in which he was domiciled at the time. And so would one have been eligible to the Senate who nine years before had enjoyed State citizenship in one of the States under the Articles of Confederation.

In the clause fixing the qualifications of the President, the language is changed from "citizenship" to "residence." It says no person shall be elected President who shall not have been "fourteen years a resident of the United States." Fourteen years went back to the period of the battle of Lexington. It must be that a higher evidence of attachment to the country was intended to be secured in the President than in a member of Congress, but unless "residence" in the States be regarded as furnishing that evidence equally with citizenship itself, then the qualification of the President is not of so high a character as that of a member of Congress.

It cannot be otherwise than that all free natural-born residents of the States and all who had been naturalized by the States became, at the adoption of the Constitution, citizens of the United States. Their descendants of course followed their condition. All born of such parents became citizens at their birth. The States, after the adoption, could no longer naturalize. This power, by the Constitution, was given to Congress. But now upon the moment of naturalization the foreigner becomes a citizen of the United States, and may become a citizen of any one of the States by the same residence and under the same circumstances as native-born citizens of other States.

Now, if there be any force in the reasoning to which I have referred, or any weight in the authorities cited, United States citizenship is just what it is defined to be in the first section of this amendment. I mean that those persons who are to be made citizens by this amendment are the persons, and none others, who have ever been

under a fair and rational interpretation of the Constitution since its adoption in 1789.

I now proceed to consider briefly the second section of this amendment. It materially changes the Constitution as respects representation in the lower House of Congress. The same change, of course, will be produced in the Electoral Colleges. The Constitution, as it now stands, apportions Representatives and direct taxes among the States according to the number of their inhabitants; but this number is to be ascertained by taking the whole number of free persons, male and female, including apprentices, and adding thereto three fifths of the slaves and excluding all Indians not taxed. It is upon this enumeration, ascertained by the census every ten years, that Representatives have been apportioned to the States since the formation of the Government. At the time the Constitution was framed the large slave-holding States desired that the whole number of their slaves should enter into the basis of representation. This was resisted by States having few or no slaves. The question was one of great difficulty. It was finally compromised, however, by estimating each slave as three fifths of a person for purposes of representation. But it was insisted that if he were three fifths of a person for representation he should also be three fifths of a person for purposes of taxation. The controversy was therefore settled by imposing direct taxation upon the States in the same proportion in which they might be represented upon their slave population. The clause was so adjusted that whenever a slave became free he necessarily became a full person for purposes of representation and taxation. He then was included in the list of "free persons," and not in that of "other persons." Therefore, whenever a State emancipated its slaves, as many did before the late war, it increased its representative power in Congress and fell subject to increased taxation to the extent of two fifths of all persons so emancipated.

The recent war of rebellion has terminated in the abolition of slavery in all the southern States. This emancipation, of course, was against the will of those States; but it none the less increases their representative power because it was forced on them.

This provision of the Constitution, like many others, looked to the ultimate extinction of slavery in all the States. It was so worded, of course, as to be adapted to either state of affairs. It compromised a present difficulty growing out of a state of slavery, but anticipated a period when it would cease to exist. When the former slave became a free man he was to become one of the people. He ceased to be property, and became a person. I confess I can see no good reason why the negro thus emancipated should be excluded from the basis of representation. I believe that no one in the Federal Convention asked the exclusion of any person, white or black, citizen or alien, provided he were a freeman. Indeed, in the fifty-fourth number of the Federalist, Mr. Madison, commending the Constitution to the people, says:

"It is not contended that the number of people in each State ought not to be the standard for regulating the proportion of those who are to represent the people of each State."

And in the same connection he remarks:

"That if the laws were to restore the rights which have been taken away the negroes could no longer be refused an equal share of representation with the other inhabitants."

For myself, I cannot refrain from expressing regret that it becomes necessary for me to give apparent endorsement to a principle contained in this second section. It departs from the views of the framers of the Constitution in several particulars. The first prominent objection is that it separates representation from taxation. If it were proposed to base taxation upon wealth instead of numbers it would be much better. Mr. Madison said that the rule of representation referred to the "personal rights of the people," and therefore should be based upon numbers, irrespective of their political condition. But he remarked that the rule basing taxation upon numbers is "in no case a precise measure, and in ordinary cases a very unfit one." The amendment, as proposed, does not base taxation upon wealth, but leaves the Constitution in this respect as it now stands. If direct taxation be hereafter levied it will be apportioned among the States, according to their numbers, including free negroes as well as all other persons. If I believed it probable that direct taxation would be resorted to in the future legislation of the country, nothing could induce me to support this proposition. A second objection to it consists in the argument furnished, that we admit the necessity, or at least the propriety, of excluding arbitrarily a freeman from the elective franchise; and it will be contended that we render a present doubtful power of the States to do so certain. A third objection which is urged consists in the fact that while it inflicts punishment for the exclusion of the negro from the ballot, it permits the white citizen and the alien inhabitant to be excluded by the States without loss of representative power. A fourth objection will be urged that it presents too great an incentive to the States to extend suffrage to persons who are ignorant and uneducated for the mere purpose of acquiring power, inasmuch

as those who may be excluded under this provision on account of the want of intelligence will be equally excluded from the basis of representation.

The amendment fixes representation upon numbers, precisely as the Constitution now does, but when a State denies or abridges the elective franchise to any of its male inhabitants who are citizens of the United States and not less than twenty-one years of age, except for participation in rebellion or other crime, then such State will lose its representation in Congress in the proportion which the male citizen so excluded bears to the whole number of male citizens not less than twenty-one years of age in the State.

The original amendment reported by the committee of fifteen, which passed the House of Representatives and was defeated in this body, put the basis of representation on numbers also, but it differed from this in some important particulars. It provided that—

"Whenever the elective franchise shall be denied or abridged in any State on account of race or color, all persons therein of such race or color shall be excluded from the basis of representation."

That proposition seemed to admit in express terms the right of the States to exclude from suffrage on account of color. The words "race or color" are left out of this proposition entirely. The States under the former proposition might have excluded the negroes under an educational test and yet retained their power in Congress. Under this they cannot. For all practical purposes, under the former proposition loss of representation followed the disfranchisement of the negro only; under this it follows the disfranchisement of white and black, unless excluded on account of "rebellion or other crime." The former might have had the effect to keep the negro uneducated, in order that he might be permanently excluded under that pretension. There was to be no penalty on such exclusion, and if prejudice against race exists to the extent supposed in the southern States, perpetual ignorance must have been the fate of the negro unless Congress could have interfered to educate him. If equally educated with the white man, no possible pretext remained for the denial of suffrage except the color of his skin; and if he were excluded for race or color, he no longer constituted a part of the representative population. Under the former proposition the exclusion of ten negroes in a State because of race or color excluded from representation all persons of that race or color, though they might number half a million or more. This encourages to give the ballot, because it gives power in the same proportion as the ballot is given. In some respects, therefore, this proposition is far superior to the one defeated. No amendment can be offered on this subject which would not be liable to objections, but this is not subject to many of the harsh criticisms to which the other was.

I have already said that no one in the Federal Convention asked that a freeman should be excluded from the basis of representation, and that I could see no good reason for excluding the negro now. The same reason, however, which requires that he should be counted in the basis of representation equally demands that he should constitute a part of the political sovereignty in the several States. It is true that no one in the Federal Convention asked that the free negro should be excluded from the representative basis, but is it not equally true that the distinguished statesmen of that day admitted the citizenship of the negro and acknowledged his right to suffrage in the States? I have already shown that in five States of the Union the negro enjoyed the right to vote when the Constitution was adopted. He was therefore a citizen in those States, and the Constitution declared that, being a citizen in one State, he should have the privileges and immunities of citizenship in every other State. Having the right, therefore, to vote in one State, the right would attach to him on equal terms with the white man whenever he removed his domicile to another State.

Mr. Madison expressed confident belief that the people in the several States would not abridge the rights of suffrage, but would rather extend them. Such, no doubt, was the general belief. If these anticipations, in connection with the hope of early emancipation, had been realized, we should long since have had a Government founded upon the consent of the governed. Had such been the case we would have had no war. The war came, however, and brought with it the bitter fruits which we have gathered during the last five years.

The Virginia convention, on the 12th of June, 1776, uttered the sentiment of patriotism, and proclaimed the true theory of republican government, when it declared that "all men having sufficient evidence of permanent common interest with and attachment to the community have the right of suffrage, and cannot be taxed or deprived of their property for public uses without their own consent or that of their representatives so elected; nor bound by any law to which they have not in like manner assented for the public good."

No one pretends now to doubt that slavery and the discussion growing out of it produced the late war. Slavery is the natural result of a certain degree of inferiority. The father is the patriarch and governor of the family because of this inferiority. Until the child is twenty-one years of age the father has the power of correction and enjoys the fruits of his labor. This rests upon the admitted fact that the minor is incapable of taking proper care of himself. The father is bound only to treat him with humanity, but has the right to control his person and take his

earnings. Slavery proceeds from the same argument. It is assumed that the black man is not only inferior to the white man, but incapable of self-government. Admit the truth of this proposition and slavery becomes justified by the highest attributes of justice and humanity.

Mr. A. H. Stephens, the wisest of the southern statesmen, fully comprehended this theory when commending the confederate constitution to the people of Savannah in 1861. He said "the prevailing ideas entertained by him [Jefferson] and most of the leading statesmen at the time of the formation of the old Constitution were, that the enslavement of the Africans was in violation of the laws of nature; that it was wrong in principle, socially, morally, and politically." He said, further, the new constitution has put at rest forever all the agitating questions relating to our peculiar institution — African slavery as it exists among us — the proper status of the negro in the form of our civilization. This," he repeats, "was the immediate cause of the late rupture and the present revolution."

Again, he says, the corner-stone of the new

Government "rests upon the great truth, that the negro is not equal to the white man." Speaking of the anti-slavery fanatics of the North, he said, in the same speech, "Their conclusions are right if their premises are; they assume that the negro is equal, and hence conclude that he is entitled to equal privileges and rights with the white man. If their premises were correct their conclusions would be logical and just; but their premises being wrong, their argument fails."

The position taken by Mr. Stephens is certainly correct. If the negro be inferior to the white man, and incapable of self-government, modified slavery results as a matter of course. The southern argument, asserting the divinity of slavery, proceeded from this idea. We have declared that slavery in no form shall exist hereafter. In so declaring, we necessarily deny the negro's incapacity to take care of and govern himself. Now, if the abolition of slavery is not to be followed by such privileges and rights as will maintain and perpetuate the freedom of the emancipated, it amounts to nothing. It is "as sounding brass or a tinkling cymbal." Mr. Stephens said that this idea of inferiority, upon which slavery was founded upon the one side, and the opposite idea of man's equality on the other, carrying with it equal rights and equal privileges, caused the late war. It was first a contest of opinion, then a contest of force. In the overthrow of the rebellion one idea triumphed, and necessarily the other was vanquished. False ideas, then, and false teachings had corrupted our institutions; These teachings interfered with the harmony of the Government. They had produced disease. That disease had developed itself in a destructive war. It was for us, when violence had ceased, when the paroxysms of acute pain had been allayed, to consider whether the cause of disease should be removed entirely or be left in the system to fester again.

I think it somewhat unfortunate that Congress was not in session when armed hostility ceased. It is possible that, had it been in session, it would have done nothing. It had certainly been derelict in failing to provide for a contingency, which for many months before its occurrence it was evident must soon happen. And why did it fail thus to provide? For the same reason that produced the war. Because we could not agree as to the status of the negro. We feared to grapple with prejudice and did nothing.

President Johnson, finding the rebel lion overthrown and himself just advanced to the executive power of the nation, naturally enough felt a desire to see the Union at once restored. He had borne a prominent part among the friends and supporters of the Government, and it would be by no means strange that he were possessed of an ambition, laudable and honorable within itself, to take a yet more prominent and exalted position in rebuilding the shattered columns of the Union. The war had been waged that the States might be kept in their proper relations to the Government. It was the wish of every earnest patriot in the land to see complete restoration, and to see it as soon as possible. It had been a fearful period, those four years of anxiety and dread. The loyal people never desired the war. They accepted it simply as a necessity. They went to the battle without malice toward their enemies, but simply to save the Union, and in so doing to secure the happiness and even safety of both North and South. Hence when victory came the first shout of exultation was immediately followed by an exhibition of charity and magnanimity toward a fallen foe which brought to the national name more true glory than all the achievements of war, and gave each hero a fame that will live when his most daring deeds of martial prowess shall have been long forgotten. The assassination of Mr. Lincoln checked but did not subdue this feeling of mercy.

The incoming President took counsel of his Cabinet advisers as to the course of policy to be pursued. They were substantially the same who had devised a plan of restoration with the lamented Lincoln in 1863. At that time not more than three of the seceded States could possibly be drawn into any scheme of restoration. The rebel government held undisputed sway over all the others. The erection of loyal governments in these three States at

that time should have been regarded in the light of a military measure, a means rather to crush out organized treason by fostering a counter-power in its midst. Mr. Lincoln's plan was certainly not designed to build up permanent institutions to exist in a time of peace, founded upon the consent of one tenth of the inhabitants. An oath had been prescribed for the voter, good enough for that period and well calculated for the purposes designed, but wholly unfitted to the spring of 1865, when the armies of Lee and Johnston had returned home and the reestablishment of the Union had become a fixed fact. They had been stripped of the musket. They, of course, expected for the time being to be deprived of the ballot. It was the ballot in the seceded States which had made their rebellion so formidable. It had given the rebellion form and consistency. It had clothed treason with legal sanction. It gave the insurgents a government and lent organized purpose to every movement. The ballot had previously aided treason only because the ballot was partial. If even one half of the negroes could have voted in the seceded States in 1861 secession would have been lost in each one of them. Secession was successful at that time, because it was entirely in the hands of those whose fancied interests and whose real prejudices had brought on the war. One would suppose that when armed violence had been suppressed entirely, they who had commenced it should give a full and not a partial acceptance to the situation. I think the South at first was willing in good faith to do so. They expected nothing else. The more intelligent among them admitted that the whole case submitted to the arbitrament of the sword had been decided against them. They did not cease to believe in secession but the point was decided and they yielded to the decision. They did not believe that slavery should be abolished, but slavery was involved in the case as made up, and they yielded, as yields the unsuccessful suitor in the highest court of judicature. They did not believe that equal rights and equal privileges should be accorded to the negro. But this question they knew was involved in the contest also. The premises taken by the supporters of the Union were proved to be correct, and now, in the language of Mr. Stephens, the whole conclusion was "logical and just."

The Cabinet, however, had committed themselves to a policy, and now came that thing so dangerous always in human conduct — pride of opinion, attachment to preconceived notions. It may be possible that the mind, like machinery, runs best in old and worn grooves. It is certainly true that the change of condition in public affairs made no change in policy. What had been an acknowledged temporary arrangement was now to be made a permanent institution. A plan of restoration was adopted which put the political power of the South right where it was at the beginning of the war. Many persons think that this was designed, and the President and his Cabinet wished to build up a new party, having its strength in the old rebel element. I cannot think so. I do not think so. I think they were actuated by the best of motives, but committed a blunder. They were certainly too hasty, but I attribute their haste, first, to that ambition of which I have spoken, and second, to a false pride of opinion, with which man's happiness must ever contend until his whole moral nature has been reconstructed.

So soon as the southern people found political power again in their grasp, the spirit of humility gradually disappeared, and they conceived a hope that the judgment rendered against them in the tribunal of arms might now be arrested. They supposed that something might be saved from the wreck of their political fortunes, which, properly invested, would ultimately restore them to their former place and grandeur in the Government. If slavery could be saved, this were an investment of the most priceless character, but the President said, "Slavery shall not be saved." For this the country owes Andrew Johnson a debt of gratitude. They then thought if the technical right of secession, even, could be admitted in the words of their conventional proceedings, it would be so much laid up for the future. The President said "that no words must be used upon which an inference could hang favoring the right of secession." In this Andrew Johnson was right, and no true man will withhold his praise. They next endeavored to save treason from odium by providing that the debt contracted in its perpetration should be acknowledged and paid. To this the President gave his refusal, and again the country is thankful to Andrew Johnson for this act of true statesmanship.

For these acts the President was denounced as a tyrant. I only regret that his tyranny did not go far enough. He stopped at the precise point where the greatest degree of moral courage was needed. Southern prejudice against race had started the war, northern prejudice had prolonged it. Southern prejudice, if unsustained, would have given us a war of but short duration. Northern sympathy came to its aid, and doubled its miseries. At this period the South was ready to cast off its prejudices if the demand had been made. The President and his Cabinet had boldly conducted us to the overthrow of southern rebellion. But they now cowed before this spirit in the North which had aided and prolonged the strife. The South saw its opportunity and promptly collected together all the elements of prejudice and hatred against the negro for purposes of future party power. They denied him the right to hold real or personal property, excluded him from their courts as a witness, denied him the means of education, and forced upon him unequal burdens. Though nominally free, so far as discriminating legislation could make

him so he was yet a slave. It was at this period, as I have said, that the President and his Cabinet faltered. If they had put their veto upon these measures, their voice would have been the law; the South would have been saved from their worst enemies, themselves, and the whole country would have felt secure in the beginning of a better era. But they were encouraged by this indecision and want of moral firmness in the President and his Cabinet, and adopted a system of laws which doomed the negro to hopeless ignorance, degradation, and misery. They not only denied him the ballot, but denied him the commonest rights of human nature. If this thing were to be continued there was no hope left for his future amelioration. He must be a degraded outcast. The only change made was in the name: he was once a slave, and men called him a slave; men now mocked his condition by calling him a freeman.

Thus encouraged the southern States became insolent in the immediate prospect of power, and presumed to insult the loyal sentiment of the country by conferring honors upon the most obnoxious leaders of their rebellion. They even elected and sent to Congress the men who have held the highest places in the rebel government.

In this condition of affairs Congress convened. The first thing, of course, was to close the doors of Congress against this rebel invasion. The next was to do a simple act of justice to the negroes and poorer whites of the South, who had been always loyal to the Government. For that purpose, "the act to establish a Bureau for the Relief of Freedmen and Refugees," called the "Freedmen's Bureau bill," and the "act to protect all persons in the United States in their civil rights," called "the civil rights bill," were presented to Congress and adopted. Whatever may be said against these measures, and much has been said, their sole object was to break down in the seceded States the system of oppression to which I have alluded. Their only effect was, after feeding

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the starving white and black, to give the right to hold real and personal estate to the negro, to enable him to sue and be sued in courts, to let him be confronted by his witnesses, to have the process of the courts for his protection, and to enjoy in the respective States those fundamental rights of person and property which cannot be denied to any person without disgracing the Government itself. It was simply to carry out that provision of the Constitution which confers upon the citizens of each State the privileges and immunities of citizens in the several States. These measures did not pretend to confer upon the negro the suffrage. They left each State to determine that question for itself. Their highest aim was to secure what the lawyers call civil rights to every person within the jurisdiction of the Government. The necessity for these or similar measures was imperative. To have failed in this duty would not only have rendered the results of the war perfectly abortive, but would have completely withered the laurels we won in its successful prosecution.

The President saw fit to veto those measures, supposing them to be unconstitutional. I never doubted the power of Congress to pass them. I never doubted that the Government would be disgraced if it failed to establish for the private citizen the muniments of freedom intended to be secured by them. I did have my doubts whether this was the best way to accomplish the end. It would necessarily bring about a conflict between State and Federal jurisdiction. I knew it would meet with resistance in the States. I thought it would be repulsed, as even beneficence itself is always repulsed when forced on an unwilling community. I feared that in the conflict to arise the rights of the weak would be lost sight of, and finally sacrificed. I then believed, and do now believe, that the necessity for these measures is an unfortunate necessity. That necessity cannot exist where the local government is founded upon the consent of the entire people. The people of Georgia know what laws are best for their own happiness and security. But when one half of the people legislate for all this truth ceases in its application. Let all have a voice in making the law and the popular heart will execute it, because the liberty of all consists in its enforcement. It is only where political power is in the hands of a favored few that oppression can be practiced. It is only where oppression exists that the agents of a superior power are needed for protection. Give the negro the ballot and he will take care of himself, because his interest requires it. Give him a bureau agent, and he will sometimes be plundered, because his interest and the interest of the agent may differ.

At an earlier day in the session I offered a proposition which I thought would secure these ends. It was a constitutional amendment in three lines. It prohibited the States, in prescribing the qualifications of voters, from discriminating against the negro on account of his color. Had this been adopted, by its own force it made him a citizen in each State, because it gave him the highest prerogative of a freeman. There would then have been no necessity for declaring who are citizens of the United States, for every freeman would have worn the honored badge of citizenship. It would then have been useless to declare that no State shall abridge the privileges and immunities of citizens of the United States, for those simple words presented an effectual bar against it. It would have been superfluous to interdict the States from taking life, liberty, or property from the citizen without due

process of law; for liberty being first given, the citizen can protect his own life and property. The provision securing equal protection of the laws against inimical State legislation might then be dispensed with as wholly unnecessary. The very section we are now considering, with all its difficulties of verbal adjustment, might be abandoned and the Constitution be left, in that respect as our fathers made it. The necessity for abridging representation would have ceased, for both representative and elector would have been loyal. These few words would have accomplished directly what this proposes to accomplish indirectly after years of political strife, in which truth and conscience and patriotism are too often sacrificed to the attainment of success. Had that been done it were useless to enact an exclusion from office of the leaders of the rebellion. Where all men are interested in the Government, none but peaceful revolutions are needed. Reforms are worked at the ballot-box. Government then, and only then, becomes a divine institution. Rebellion against it not only injures the public weal, but it shocks the moral sense of a contented and happy people. They who lead such rebellions are at once visited with public odium. In public estimation traitors then stand as the greatest of criminals. They are looked upon as monsters in human shape. Cain bore the mark of one crime—murder; but a people perfectly free will never fail to stamp traitors, as they deserve to be stamped, with the mark of all crimes.

If that proposition had been adopted we need not pledge our faith to the payment of the public debt. That faith would have been best secured in the honest convictions and the moral sense of the people. Had it been adopted, we need not have proclaimed by constitutional enactment the invalidity of the rebel debt, founded as it is upon contracts made in contravention of public policy, against the best interests of the State, in violation of the laws of the land, and for the purpose of enslaving the very men whose substance would be required to pay it.

But, Mr. President, in all this I may have been mistaken. The presumption is, I was mistaken, for a large majority has ruled against me. I yet have faith in its ultimate success. Necessity, if nothing else, will soon bring believers. Believers may be now few, but as through the faith of the Hebrew mother, so again they will soon be "many as the stars of the sky in multitude, and as the sand which is by the sea-shore innumerable."

The old saying is true, that we must take things as we find them. I am somewhat an optimist, and this at last maybe the best. The negroes during the war were our faithful allies. They are now steeped in poverty and most remain so unless Congress does something to help them. The poor whites of the South are not in a much better condition. State governments are already in the hands of those hostile, through prejudice or interest, to their improvement or amelioration. The legislation of these governments even now frets with oppression. Within the scope of State jurisdiction there is no such thing as equality in the law. The State courts are already deciding the "civil rights bill" to be unconstitutional. The validity of all laws must depend at last upon human judgment. Judges, even in the highest courts, are but mortals. Should the Supreme Court of the United States affirm the judgment of these inferior tribunals, the present period would be no better for the rights of the negro than that when the Supreme Court once before supposed he had no rights which the white man was bound to respect. Should such be the action of this tribunal, the problem would at once be presented, whether four million people can be peacefully held nominally free, but actually slave.

If it be true that these negroes are not susceptible of education; if they are more nearly allied to brutes than to men; if as free men they can add nothing to the wealth of the country; if they are unfit to take part or lot in the State governments, it may be asked, why should they be represented in Congress? If they are incapable of choosing a representative for themselves, why should those who treat them as inferior beings; and almost deny their humanity, claim the right to represent them as citizens? It is said that women and aliens in the North are retained in the basis of representation, why should not the negroes be retained in the South?

It may be answered that these women and aliens are treated as human beings; they are regarded as persons and not dumb brutes; they enjoy the right to acquire property, to enter the courts for its protection, to follow the professions, to accumulate wealth, whereby national resources are increased and national power augmented; they are a part of the people. The road to the ballot is open to the foreigner; it is not permanently barred. It is not given to the woman, because it is not needed for her security. Her interests are best protected by father, husband, and brother. The negro is the object of that unaccountable prejudice against race which has its origin in the greed and selfishness of a fallen world. That prejudice belongs to an age of darkness and violence, and is a poisonous, dangerous exotic when suffered to grow in the midst of republican institutions, where we boast an asylum for the oppressed of every land. Why do we shudder to meet this question? Nearly five million people, strong, vigorous, and inured to labor, are in your midst, partially without civil, wholly without political rights. What will you do with them? You have three alternatives before you, and only three. You must kill them, colonize them, or ultimately give them a part of your political power. For this last alternative the country is not, yet prepared. With the two former humanity and common sense will successfully struggle.

But I am told that this proposition will operate as a penalty on the South. Suppose it were a penalty from which she could not escape, would it be an adequate punishment for the crime committed? Might it not, if justice untempered with mercy were consulted, be made a permanent rule until the public debt were paid and the curses of treason were effaced from the land? If it be a penalty, it is one which the offender may escape. It is likened unto the penalties of the divine law. The choice of good and evil is before them. The indulgence of evil is followed by punishment, because it is an inexorable law of man's organization. The choice of good is followed by happiness, contentment, prosperity. It is thus wisely ordained, that interest may constrain to duty, in the exercise of which the world is advanced and man is ennobled. This may be called a penalty, but a simple net of justice will fully discharge it. It is equal, for it applies to all the States.

Another advantage consists in the fact that it compels the moral and intellectual culture of the lower classes. If not properly qualified for the exercise of the ballot, the State governments may fall into the hands of incompetent and dangerous persons. Until all can vote, all cannot be represented. All cannot safely vote until a large majority are educated. This provision, then, may constrain to justice in a double sense. The strong argument in favor of it is, that as the Constitution now stands four white voters in the South, formerly soldiers in Lee's army, will be equal in representative power to six of those who followed Grant from the Rapidan to Richmond or Sherman from Atlanta to the sea. I therefore accept it, in the hope that the South, seeing its true interests, will, even before the next census, learn to seek justice for themselves in the exercise of the golden rule.

The third section of this amendment provides that no person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States or under any State, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid and comfort to the enemies thereof. But Congress may by a two-thirds vote of each House remove the disability. The language of this section is so framed as to disenfranchise from office the leaders of the past rebellion as well as the leaders of any rebellion hereafter to

come. It strikes at those who have heretofore held high official position, and who therefore may be presumed to have acted intelligently. When the section is closely scrutinized, it will be seen that comparatively few men will fall subject to the exclusion. It does not, as sometimes supposed, reach all who may have taken an oath to support the Constitution of the United States. The civil officers of the Federal Government, previous to the war, were comparatively few. With the exception of postmasters, perhaps not a thousand are yet remaining in the South. The Army and Navy of the United States were very small before the war, and I presume it is doubtful whether three hundred military and naval officers yet survive the rebellion who will be affected, and these will be chiefly officers who were educated in the Military and Naval Schools at the expense of the Government. They not only forfeited their oaths, but committed an act of ingratitude which forever stamps them as unfit for public position. I have but little idea what number of persons will be reached as former members of Congress. The number cannot be very great. Those who were actuated by convictions of duty, and believed themselves right in their rebellion, boldly went to the front and fell victims to their error. Those who sinned against light and knowledge, knowing the iniquity of their conduct, exhibited such want of moral worth as to forbid an honest discharge of public duty hereafter. The executive and judicial officers of the seceding States are supposed to be men, not only of intelligence, but of distinguished abilities. These persons are not numerous, they will not likely exceed two or three hundred. Some of these took so prominent a part, and were so relentless and vindictive in their persecutions of Union men, as to have become especially obnoxious to the loyal sentiment of the country. It will be best for the South itself to discard all such men for the future. Much the largest class of persons to be excluded under this amendment will be found among the former members of the State Legislatures. What may be the probable number I have but little idea. Perhaps fifteen hundred or two thousand will cover all classes debarred under this amendment from the privilege of holding office. If we deduct from this the number who will be able to prove themselves innocent when charged with complicity with the rebellion, we shall have two or three hundred left, consisting chiefly of those who, as officers of the Army, educated at public expense, surrendered their commands into the hands of the enemy, or who as members of Congress met in conclave under the roof of the Capitol to plot treason against a Government which had honored them, and which daily paid them for acts of treachery done under the sacred name of public duty. Those fierce "furies of the guillotine," who came into public life under the reign of terror, inaugurated in 1861, and who sought and obtained the offices of the confederate government

because their natures were as wicked and devilish as the treason they supported, will yet be able to hold office, State and national. They are not disqualified by this section. They never took an oath to support the Constitution of the United States, for they were unnoticed until the reign of crime commenced. They were born into public life with the confederate constitution. They were turbulent, dangerous men, who found no favor in times of peace. It required commotion and storm to bring them to the surface. The rebellion was in a large measure their work. It required daring and heartless men to conduct it, and they soon became its leaders. After the adoption of the amendment we shall see these men in public office. The whole country will conclude that those who are disfranchised are no worse than those who yet lead southern sentiment, and Congress, by a vote of two thirds, will remove the disability. I have no doubt that this will be the conclusion of the whole matter.

I would not be understood in what I am now saying as complaining of the provision. I would perhaps be more merciful still, simply because no adequate punishment can be devised for the wickedness of the offense. We cannot punish all. To discriminate among those who are equally guilty wears the garb of injustice. We cannot even punish those who are guilty of the highest crimes, crimes which give treason its darkest hue. To do so would stamp the nation with cruelty; therefore we cannot begin without injustice. We must be merciful. I am willing to make the highest virtue of that necessity. There is so much guilt as to render the task of punishment hopeless. Hence the provision depriving even the worst rebel leaders of the ballot has been wholly abandoned. Lee, Johnston, Wade Hampton, Moseby, and even Jeff Davis, are left as qualified electors, competent to vote for State officers and members of Congress. Moseby, after the passage of this amendment, may be legally elected to any office in the gift of the Government.

Distinguished Senators tell us that this deprivation of office is a punishment. If it be a punishment, it is so insignificant when compared with the crime that it is scarcely entitled to the name. They tell us that it is a bill of attainder. Suppose it were; are the people in their sovereign capacity prohibited from passing a bill of attainder? The people, in forming a Constitution, said that Congress should pass no such bill. They surely possessed the power to authorize Congress to do so. But for the similar prohibition on the States each State could pass a bill of attainder. The people reserved the power to themselves. They surely can amend their Constitution. If they had the power originally to declare that a member of the lower House of Congress shall have been seven years a citizen of the United States, a Senator nine years, and the President a native-born citizen, a resident for fourteen years, they certainly had the right to say that no man shall hold office who has committed murder, burglary, or larceny; and if they can so declare, they may certainly disfranchise one who has been guilty of treason. It is said the law is *ex post facto* in its character; what if it is? Have not the people the right, by a constitutional amendment, to enact such a law? It was even feared that Congress would be able to do so, and it was admitted that the States might do so if the people had not inhibited it in the Federal Constitution. I am aware that bills of attainder and *ex post facto* laws are unjust within themselves, and ought not to be passed where the power to do so is clear.

But I deny that this is a bill of attainder or an *ex post facto* law. Such laws are criminal and not civil in their character. In the one case they select a particular delinquent, and punish him by the sole act of the Legislature without the forms of law; in the other, they call that a crime which was innocent at the time of the act, and assume to punish it, or prescribe a greater degree of punishment for that which was already punishable. Before this provision can be called a bill of attainder or *ex post facto* law, it must be amenable to the charge that it proposes in some form to punish. It is sufficient for this argument to say that this is an act fixing the qualifications of officers and not an act for the punishment of crime.

And again, punishment means to take away life, liberty, or property. These are absolute or inalienable rights. To take them away is an injury to the person. It is what we call punishment. They ought never to be taken away without due process of law. Office is the creature of Government. It is true it may be called a right. The right is not absolute but conventional. The Government created it and the Government can take it away. It has never been regarded in the American courts as a punishment when conventions and Legislatures deprived incumbents of their offices. Every State constitution contains provisions inhibiting the passage of bills of attainder, *ex post facto* laws, and laws impairing the obligations of contracts. The Federal Constitution provides the same limitation upon State power, which opens the Federal courts to any person aggrieved, and yet it is notorious that every State in The Union has turned officials out of office, changed their terms of service, reduced their salaries, and entirely abolished the laws under which they held. Nobody ever supposed that this was punishment, and unless that were punishment this cannot be.

If this provision be all, even if faithfully carried out, it will be an act of the most stupendous mercy that ever mantled the crimes of rebellion. This rebellion was causeless. It was not only causeless but gigantic in its proportions, carrying hundreds of thousands to an untimely grave, and leaving a legacy of debt sufficient to crush

the energies of any nation less vigorous and powerful than ours. It was not only a gigantic rebellion, but it was conducted by its leaders in a spirit of fiendish ferocity which renders them wholly unworthy of public confidence hereafter. It is said that these leaders ought not to be condemned unheard, that they should not even be disqualified for official position until their guilt is established in a court of justice. If it were proposed to take from them life, liberty, or property, I would be unwilling to do so except according to the law of the land. But when it is only proposed to fix a qualification for office and deny them future distinctions, which would rather make their treason honorable than odious. I do not hesitate to act.

I know this will do but little good; I doubt whether it will do any. If they shall bring forth fruits meet for repentance, I perhaps will be the first to remove the disability. I never have exercised a malicious spirit toward these people. I have pitied, but never hated. No act of confiscation has ever received my support. No such act ever will. I never but once voted to disfranchise those who participated in the rebellion, and then only because I believed the best interests of my State demanded it. The necessity for such exclusion there has perhaps already passed. They clamor for suffrage, and I for one am willing to grant it to them if they will now be generous enough to extend it to all who carried the musket to defend the Government while they carried the musket to destroy it.

Mr. President, the only remaining section of the proposed amendment pledges the public faith to the honest discharge of those obligations which we have incurred in maintaining the national life. This is but an act of justice to the creditor and a proper precaution against the establishment of parties hereafter appealing to the sordid interests and lowest passions of men. It not only accepts honesty as a principle, but indorses it as the highest and best policy of the State as well as of individuals. It also declares the rebel debt void, and therein it merely adopts an old and familiar principle of the common law. No agreement founded on an immoral consideration, no contract made, the object of which is to resist the law or overthrow Government, can be enforced. It may be asked, then, why adopt this amendment? The answer is, the defendant may not avail himself of his defense. He may be willing to make a new promise, and the debt, though now void, may be sufficient to support this new promise. And again, payment may be made voluntarily, though the debt be void. But the chief argument in its favor is that it forever settles a question, and settles it as it deserves to be settled. It precludes the organization of a political party, which might appeal to the pride of the South and receive material aid from the corruption funds of foreign creditors.

Under all the circumstances I think the country should accept the amendment, for it does much toward settling some of the vexed questions of the past.

Mr. YATES. Mr. President, I had not expected to say anything upon this question. I preferred to proceed to a vote immediately. We have had much debate upon it. I know the anxiety which gentlemen feel to come to a vote on this question, and I shall say but a very few words.

I have thought that in consequence of the position which I assumed in the beginning of

the session, and from the fact that my heart has not been entirely in favor of the measures which have been proposed, and still not opposed to them, I may say, it became me to explain my views. It seems to be fashionable in this day for gentlemen who presume to think their views should be known to avail themselves of the opportunity to explain their position. I propose to do so now; and that I may speak more directly to the purpose, that I may present the views which I wish to present, and which I promise to detain the Senate but a very few minutes in stating, I will send to the desk of the Clerk an amendment which I propose to be added as a last section to the sections already under consideration, not so much that I care whether a vote is taken on it or not, but simply as the basis of the very few remarks which I shall submit on the present occasion.

The Secretary read as follows:

Nothing in the foregoing sections shall abridge or in anywise affect the rights, franchises, or privileges of any inhabitant of the United States, or of any State or Territory of the United States, guaranteed by the constitutional amendment abolishing slavery within the United States, in force on the 18th day of December, 1865.

Mr. YATES. At the beginning of the session I took the ground that already by the Constitution of the United States, as amended, every man in the United States, without regard to color or caste of any kind, was a citizen, and I offered a resolution to that effect, based upon the fact that by the constitutional amendment we had abolished slavery within the United States and in all the Territories subject to the jurisdiction of the United States, and required Congress, by appropriate legislation, to enforce that provision of the amendment. I offered my resolution declaring what seemed to be an admitted fact by Senators of distinguished ability, that all constitutions, laws, and regulations of any State or Territory of the United States which conflicted with this amendment to the

Constitution of the United States were null and void. I took the ground that this being the fact, Congress should resort to the mode prescribed and required by the amendment, to “appropriate legislation,” to enforce that provision of the Constitution. I assumed the position that that amendment did not confer freedom upon the slave, or upon anybody, without conferring upon him the muniments of freedom, the rights, franchises, privileges that appertain to an American citizen or to freedom, in the proper acceptation of that term. I took the ground laid down in the decision of the Supreme Court of the United States in the Dred Scott case, (which certainly was a hard rule by which I should be governed,) that when this amendment passed the freedman was no longer a member of a subject race. He became by virtue of the amendment one of the people, one of the body-politic, and entitled to be protected in all his rights and privileges as one of the citizens of the United States. The deductions drawn from the decision in the Dred Scott case were irresistible. The great Senator from Massachusetts [Mr. Sumner] said — the highest compliment ever paid to me in my life — that in view of the principles laid down in that decision I had assumed an unanswerable position.

I took the ground that the former slaves in every State of the United States, being made free by this amendment, occupied precisely the same position with any other part of the body-politic, that a son of a colored man born in the State of Wisconsin under the broad aegis of this amendment to the Constitution, had the same rights that my son had. I maintained that by this amendment to the Constitution, and by the promises of Abraham Lincoln made in his proclamation of emancipation, the former slave should be maintained in his freedom; that being like any other man, and not unlike him in any respect, under this amendment to the Constitution, he had the same right, the same inherent, if you choose, God-given right; and further, if he had not that right naturally or civilly or politically, he, by his heroic valor, his prowess upon many a glorious battlefield, where he had fought side by side with our own brave sons and brothers, had become entitled to it.

I took the ground which I maintain today that suffrage is the only remedy for the evils by which we are surrounded. It is the only thing that can kill secession, the only thing that can divide the South or introduce a loyal element there which will be a counterbalancing force, the only thing which will secure us a loyal representation from the South and a loyal people in the South.

I further held that if we went before the American people without indirection or disguise upon this broad proposition, we should sweep a large majority of the northern States, we should carry some of the southern States, and we should establish this country upon the solid foundations of permanent peace and happiness.

Mr. President, I have therefore sent to the Chair the amendment which, with the consent of the honorable chairman of the committee, I am allowed to propose; an amendment which says that nothing in the sections which we are about to adopt shall be construed to mean that the rights, franchises, and privileges already secured by the Constitution of the United States to any American citizen shall be impaired or in anywise affected. Such an amendment can do no harm. If the power for which I contend does not exist in the Constitution now, these words can at the worst be regarded but as surplusage; while the thousands and the hundreds of thousands of the American people who this day believe that the power does exist there, the hundreds of thousands who believed it to exist there even before this amendment, like my friend from Massachusetts, will the more readily support the amendments which the committee have reported when they see and when they feel assured that there is nothing in the amendments which will deprive the citizen of rights already guaranteed by the Constitution of the United States. Believing as I do as a lawyer, believing in my heart that under the constitutional amendment abolishing slavery within the United States, every inhabitant of the United States (excepting unnaturalized foreigners whose case is regulated by the Constitution) is as free as I am, and entitled to the same rights and privileges that I am. I have sent to the Chair this amendment which I desire to propose, so that there shall not be even a color from any judicial decision proposing to deprive men of rights which are already guaranteed by the recognized law.

Mr. President, if the Senator from Pennsylvania who sits by my side [Mr. Cowan] were here, I would say to him that it is not radicalism that I fear. My fear is not that this Congress will be too radical; I am not afraid of this Congress being shipwrecked upon any proposition of radicalism; but I fear from timid and cowardly conservatism which will not risk a great people to take their destiny in their own hands and to settle this great question upon the principles of equality, justice, and liberality. That is my fear.

So far as my position is concerned, it is unchanged; my convictions are the rather strengthened, and if I had it in my power today, I would write it in plain words upon the face of the Constitution, plain as the stars upon the sky, not in tortuous and hard-to-be-understood propositions, but I would write in the fundamental and unchangeable law of the land, that the Declaration of American Independence was a verity, that all men were created equal; and having the powers which this Congress now has, I would prove my belief by making that Declaration a reality. If this Congress of the United States could adjourn on the 4th day of July, 1866, having

accomplished this great result it would be the greatest epoch in the annals of time. At the termination of such a war as this, with its mighty events, signalized by its grand armies and its greater issues, and by the blazonry of the great achievements of our sons upon so many glorious battlefields, after so much blood and so much treasure had been spent, I could hope that the Congress of the United States would come up to the grand results that are taught by the events of this war, and by the emergencies by which we are surrounded, and proclaim the true principle and the only principle upon which this Government can live.

I am true to the theory of my Government, I believe, I religiously believe, that the strong common sense of all the people, of the populace, of America is the salvation of the Government of the United States. My distinguished friend from Wisconsin, [Mr. Doolittle] and he is really my friend, claimed that he was the saviour of our party because he had prevented the issue of negro suffrage from being made in the State of Wisconsin last fall. Sir, a man who could claim to be the instrument of conferring these great and inalienable rights upon his fellow-men might with some propriety claim to be the saviour of his party and of his country. Does the Senator remember the gallant regiment from the State of Wisconsin, one thousand strong, who went out and bore up our flag amid the storm and thunder of battle? And he call himself a saviour of the country because he has been the instrument in the hands of Providence of preventing them from exercising the right of suffrage! Sir, his comparison of himself with our blessed Saviour was true in only one respect that I know of, and that is that he will most certainly be crucified. If, on the other hand, he could have come forward and said, "I stood by you; you were true to your country in the hour of its calamity and its affliction; we called you to the help of the Government; you came and stood by us in the hour of our calamity;" if he had made a sacrifice of himself in such a glorious act of humanity and human liberty, (if sacrifice it could be called,) it might not be considered blasphemy to compare himself to Him whose mission upon earth it was to proclaim liberty to the captive, to break every yoke, and let the oppressed go free.

Not so much of a victory was that in Wisconsin. The honorable Senator said with an air of triumph that negro suffrage had been beaten by nine thousand votes. Look at it. After two hundred years of foul oppression, of accumulated prejudice against a race, when politicians dare not assert their opinions, at the very first election in the State of Wisconsin negro suffrage lacked only nine thousand votes, according to his statement, of being carried; and I am prepared to believe that with his powerful influence it would have been carried triumphantly.

Mr. President, we may legislate on this question of suffrage. We may attempt by indirection to find direction. We know what we want and what we have got. Suffrage is upon us. Colored men vote in Wisconsin today under the authority of legal decisions. Iowa has boldly proclaimed by a majority of her citizens that she is for suffrage. Connecticut gained upon her last vote. Even in the slave States, Tennessee and Texas are on the verge of suffrage; and before these resolutions shall have passed the Congress of the United States suffrage, in spite of all of our legislation, will be an accomplished fact. Four million people set free in this country will override all political platforms and opposing forces. Seven hundred and fifty thousand voters loyal and true to the Union must and shall be had in favor of the preservation of this Government and the principles of human liberty.

It is to me the strangest thing in the world that while we deny to four million loyal men — men who have been loyal under all circumstances, who have been true to the country everywhere, in war and in peace — while we deny to them the rights of American citizens, we are prepared to extend all privileges to the men who have tried to destroy and to overthrow the Government. There is no propriety, there is no good taste in such yearnings over rebels and traitors, while we deny right and justice to our friends.

We listened to the Senator from Pennsylvania [Mr. Cowan] a day or two ago, and he

seemed to think that to deprive a man of the right to hold an office was the highest punishment that could possibly be inflicted upon him; and he supposed a most affecting case, but a case which is utterly impossible, that my friend from Michigan had been a traitor and that he wanted to be a candidate for the United States Senate, and his wife and children would gather around him and say, "Why cannot my husband or my father be a Senator? He is as great as any of those men there; why cannot he be a Senator? Simply because he has not the right to hold an office. It is a punishment; it is the mark of Cain upon his brow; it is the wolf-head upon his brow. He has no right to be a Senator; otherwise my husband or my father would be in the Senate as well as other people."

Sir, let us suppose another case. Here is a man, Winder, or Dick Turner, or some other notorious character. He has been the cause of the death of that boy of yours. He has shot at him from behind an ambuscade, or he has starved him to death in the Andersonville prison, or he has made him lie at Belle Isle subject to disease and death from the miasma by which he was surrounded. When he is upon trial and the question is, "Sir, are you guilty, or

are you not guilty?" and he raises his blood-stained hands, deep dyed in innocent and patriotic blood, the Senator from Pennsylvania rises and says, "For God's sake do not deprive him of the right to go to the Legislature." The idea is that if a man has forfeited his life, it is too great a punishment, to deprive him of the privilege of holding office.

But I stated that I should make but a very few remarks, and I now come to the point which is more interesting to all of us, and that is strange as it may seem, with these views in my mind, and while I subject myself to the criticism of my distinguished friend from Indiana, [Mr. Hendricks] I shall support, these propositions. They are not such as I approve. They do not come up to the stand-point which I have set for myself. I think that Congress has failed to come up to the stand-point of the people in this regard; but, at the same time, as I cannot get the position for which I have so earnestly contended, I will sit quietly by, as I have sat quietly by, and take the next best proposition that I can get. I believe in the good common sense of my friend from Maine [Mr. Fessenden] who says that if he cannot get the best dinner he will take the next best; if he cannot get the best proposition he will take the next best proposition. I have a good deal of faith like that of my friend from Ohio; and while I would not state the proposition quite so broadly as he does, yet I always feel perfectly safe when I am in the hands of a good Republican Union party; and I would rather trust to the wisdom of the Senator from Maine and the collective wisdom of the Senators by whom I am surrounded than to stand foolishly by myself and assert that I was the only man in the world who understood this question. I only act upon a principle that the Senator from Indiana and myself and all of us act upon here every day. We propose to amend propositions, and if those amendments fail we go for the proposition itself, notwithstanding our amendments are not adopted, notwithstanding the best thing is not in it; and that is my position today.

There are other points in these constitutional amendments to which I will not refer, except to say that my judgment approves of them. I am for the exclusion of traitors and reliefs from exercising control and power and authority in this Government until they have shown fruits meet for repentance. I am for the repudiation of the rebel debt. I am against compensation for slaves, as I am against compensation for any other rebel property. But above all there is in the first section a clause that I particularly favor. It is this:

All persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside.

And then it goes on to provide that their rights shall not be abridged by any State. We have here, in the Constitution of the United States of America, a guarantee which protects us from future judicial tyranny such as we have experienced under the decisions of the Supreme Court. We have a declaration as to who are citizens of the United States. If this amendment of mine could be adopted, that in the constitutional amendments which we submit we do not propose to conflict with any rights which have been heretofore guaranteed by the fundamental law, the Constitution of the United States, I should be still more satisfied.

But, sir, there is another feature in this proposition, and that is that although we do not obtain suffrage now, it is not far off, because the grasping desire of the South for office, that old desire to rule and reign over this Government and control its destinies, will at a very early day hasten the enfranchisement of the loyal blacks.

While gentlemen upon the other side of the Chamber are opposed to these measures as too radical, I am opposed to them, so far as I might present points of opposition, because they are not radical enough. At all events, therefore, we have the medium between extremes; we have moderation. If we do not meet the views of the Radicals on the one hand, nor the views of the pro-slavery Democracy upon the other, we at all events have the medium, the moderation which has been agreed upon by the collective wisdom of the American Senate. I am glad that I can go before my constituents and say that the whole History of the world there never were such terms of moderation and of magnanimity proposed to a vindictive foe as by these resolutions which have been reported by the committee of fifteen.

Mr. FESSENDEN. I ask leave to make a report. I have here an extended report from file committee of fifteen, so called, the committee of reconstruction, giving their views and reasons with reference to the joint resolution which they submitted to the Senate and the conclusions to which they arrived. It was my hope that some time in the course of this debate, before the vote was taken, I might have the opportunity to lay the whole report before the Senate and have it read, but it is now so late an hour, and as gentlemen are desirous of taking the vote, and it has been agreed to take it today, that I do not feel that it would be right to attempt to have it read in detail. I therefore move that it be laid upon the table and printed.

The motion was agreed to.

Mr. JOHNSON. It was understood in committee that if there should be any member who did not agree with the majority of the committee he would be at liberty to make a counter or minority report, and I merely rise for the

purpose of saying that as such is the condition in which I stand, and in which two or three other members of the committee stand, I shall avail myself of that privilege at as early a day as possible.

Mr. McDOUGALL. Mr. President, there is no one who more admires the rhetoric or the elocution of the Senator from Illinois than I, for I have known him from ancient days; but the people of Illinois a long time ago said by a formal act of legislative power that no person of African blood should go into the State of Illinois; and that is now, I believe, still on your statute-book.

Mr. YATES. It is in the constitution.

Mr. McDOUGALL. I remember very well, for I inhabited in and about that part of the world a long time ago, then it was thought improvident in the State of Illinois to allow colored people to come within their lines, and it was incorporated into their fundamental law; and that has not been, if I am correct, changed up to this time. I ask the Senator from Illinois if it has been.

Mr. TRUMBULL. The constitution has not been altered; the law has been.

Mr. McDOUGALL. I only mention this as the text for my own opinion, for I was conversant with that State at that time, and the people then held that a negro or a man of African descent was not a valuable property in the State of Illinois. That is the opinion there now, and when it comes to be questioned by my friends from Illinois, they will find that there is the same opinion in Illinois yet. They think yet that Government belongs to the white race. That is the simple, clear proposition. It is refuted. The converse is affirmed in Massachusetts and some other places, and I saw there was a meeting in Boston a short time since where they said that if the right of suffrage was not granted to the African there would be a bloodier war than the last war through which we have gone. I will give you a response to that, coming from a different part of the country. It is from a secessionist. I will state it exactly. He came back home and had reintegrated himself. A friend of mine met him at Louisville, Kentucky, and said to him, "How are you, Benham? How about this being down on Beauregard's staff?" He replied, "I was there." "How about it now?" He answered, "I tell you that I am the best Union man in the United States, and if you will give me a chance I will prove it, and I will prove it in this wise: let Massachusetts and company undertake to secede, and then I will prove my Unionism."

Mr. HOWARD. I do not wish to call the Senator from California to order; but he must be aware that his observations are not very pertinent to the question now before the Senate, and I am very anxious to bring this measure to a final vote before we adjourn.

Mr. McDOUGALL. I will not occupy the floor longer. I mean to say this by way of affirmation of my opinions upon one of the gravest questions that has arisen in these times. I believe firmly, and I believe sternly, that this is a Government where there should be no mongrel races. I would not permit it if I had the power to resist it, and I will give my voice against it, and I give it now.

The PRESIDING OFFICER. (Mr. Pomeroy in the chair.) The question before the Senate is on the amendment of the Senator from Oregon [Mr. Williams] as a substitute for the second section of the resolution. The amendment has been modified by the mover, and it will be read as modified.

The Secretary read the amendment as modified, which was to strike out the second section of the resolution and to insert the following in lieu thereof:

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Mr. HOWARD. I have one word to say upon that amendment. I desire to state, as briefly and clearly as I am able, some of the consequences to which it will lead if adopted. It declares that when the right to vote at any election for those five several classes of public officers shall be denied to any person of twenty-one years of age and a citizen of the United States, that person shall not be included in the count in forming the basis of representation. How is this to be carried out, supposing it to be adopted? What will be its practical workings when made a part of the Constitution by a formal ratification? The census-taker will find it necessary, whenever he makes the count of the inhabitants of the particular State or district where he is acting, to ascertain, as precisely as he is able, and to note down in his tables the various persons within the State who are capacitated to vote for any one or all of these five classes of public officers. For instance, he will be required to note down in his returns what

to vote for Governor of the State; how many are authorized to vote for Lieutenant Governor; who are authorized to vote for members of the State Legislature; who for electors of President and Vice President of the United States; who for the judicial officers of the State; and so on to the end of the category. Without this exact information to be furnished from the State, it will be readily perceived that it will be impossible to fix and settle the ratio of representation which the State shall be entitled to. No one class of the voters for these several classes of public officers is to be held as the standard and test for the number of persons in that State to be included in the count in the formation of the basis of representation. It appears to me that it introduces a rule which is so uncertain, so difficult of practical application, as not only greatly to increase the expenses of ascertaining the basis of representation by Congress in procuring the necessary information, but in many cases the returns must be so inaccurate and unreliable as to be next to worthless.

As I said before, I do not wish to consume the time of the Senate, but it is at once to be perceived that if this rule shall be adopted, its operations will be felt in every election of a justice of the peace, in every municipal corporation of the United States, where, by the municipal law of the place, a justice of the peace is to be elected; for a justice of the peace is a judicial officer in precisely the same sense that the Chief Justice of the United States is such. We know very well that the States retain the power, which they have always possessed, of regulating the right of suffrage in the States. It is the theory of the Constitution itself. That right has never been taken from them; no endeavor has ever been made to take it from them; and the theory of this whole amendment is, to leave the power of regulating the suffrage with the people or Legislatures of the States, and not to assume to regulate it by any clause of the Constitution of the United States.

One class of qualifications may by a State be made necessary in the election of a Governor; another set in the election of the members of the Senate in that State; another in the election of members of the most numerous branch of the Legislature; another set of qualifications may be required by the State in the election of its several judicial officers; another in the election of electors of President and Vice President of the United States; and so on to the end of the chapter. It is a system which must necessarily vary as the laws and constitutions of the States vary; and a system which, therefore, must necessarily lead to great difficulty in its practical operations and results, and in many cases be almost entirely worthless for want of the necessary exact information which Congress should acquire and use in fixing the basis. A class of voters may be excluded from voting for a justice of the supreme court in their State who may, within their municipal limits, be allowed to vote for justices of the peace. This amendment would exclude from the count all those voters, citizens of the State, who were not permitted to vote for a justice of the supreme court; and there is no telling how far this may extend, or where these disabilities may lead, and what the ultimate results may be. I far prefer some simple standard; and if it be in order I beg to submit to the Senate, as the result of the best consideration I have been able to bestow, a simple amendment to the amendment offered by the Senator from Oregon. My amendment will refer to his printed amendment offered yesterday. If it shall be adopted the whole section will read thus; and I desire the attention of the Senate for a moment to the text of the amendment if it shall be adopted, as I propose to amend it:

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But whenever the right to vote at any election held under the constitution and laws of any State for members of the most numerous branch of its Legislature is denied to any male inhabitant of such State, being twenty-one years of age and a citizen of the United States, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

This will leave the simple test to be the qualifications of a voter for members of the most numerous branch of the Legislature of the State; and it has no connection with any other State officer.

Now, sir, let me say one word more. By the Constitution of the United States those persons in a State who are privileged to vote for members of the most numerous branch of its Legislature are the persons authorized to elect members of the Congress of the United States. The rule is invariable throughout the States. Why not introduce into this amendment this ancient, simple, invariable, and easily working test, instead of the variable and shifting qualifications embraced in the amendment of the honorable Senator from Oregon?

I propose also to strike out the words "or in any way abridged" in the eighth line of the printed amendment. I do not know, and I have not yet been able to find any gentleman who did know, what an abridgment of the right

to vote really is. It strikes me it is a misapplication of terms. The right to vote is a unit. It is indivisible, as indivisible as a mathematical point, and as incapable of abridgment. If a man possesses the right to vote, he possesses it in its entirety. If he does not possess it, he does not possess it either conditionally, qualifiedly, or at all. He must possess it, wholly or not at all. I am not able to see how this right can be abridged. It seems to me this language is introducing confusion and uncertainty into our constitutional amendment. It is an invitation to raise questions of construction, and it will be followed, in my humble judgment, and as I fear, with an unending train of disputations in courts of justice and elsewhere, and there is no possibility of foreseeing what in the end will be the decision of the Supreme Court as to the meaning of the language "or in any way abridged." To me it is incomprehensible. I felt it a duty due to myself thus to express my objections to the amendment of the Senator from Oregon.

The PRESIDING OFFICER. The Senator from Michigan proposes two amendments to the amendment submitted by the Senator from Oregon. The first amendment will be read.

The Secretary read the amendment, which was to strike out in the fourth line of the amendment, after the word "taxed" the words—

But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof—

And, to insert in lieu thereof:

But whenever the right to vote at any election held under the constitution and laws of any State for members of the most numerous branch of its Legislature.

So that the amendment, if amended, will read:

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But whenever the right to vote at any election held under the constitution and laws of any State for members of the most numerous branch of its Legislature is denied to any of the male inhabitants of such State, &c.

Mr. HENDRICKS. It is not my purpose to delay the vote but a moment. I have desired to accommodate the Senator who wishes to leave, and shall not be in the way of that result, but it is my duty to call the attention of the Senator from Michigan to the language of the first section. He says that the word "abridged" as found in the second section in its connection with the right of suffrage, is of such uncertain meaning that it ought not to be used in the Constitution; that it would carry cases into the courts; and therefore the word ought not to be used. Now, I find the same word used in the first section of this article, and in a very important connection, if possible in a more important connection than that in which it is found in the second section:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

If the chairman — I was going to say the chairman of the caucus, but I will not say that — if the distinguished Senator who has this measure now in charge says to the Senate that the word "abridged," in its connection with the right of suffrage, is of such uncertain meaning that it should not be used in the Constitution in that connection, is it proper that that word shall be used in the first section in relation to the rights and privileges and immunities of citizens?

Mr. HOWARD. I think so, undoubtedly; because it is easy to apply the term "abridged" to the privileges and immunities of citizens, which necessarily include within themselves a great number of particulars. They are not a unit, an indivisible unit, like the right to vote.

Mr. COWAN. I should like to make the inquiry again, how the abridgment or the extent of the abridgment is to be determined in the several States where it is abridged for non-payment of taxes, or abridged for non-residence and all that kind of thing.

Mr. HENDRICKS. The language of the first section would be identical with the second if it were "denied or abridged." Now the Senator says he cannot understand what it means when we speak of "abridging" the right of suffrage. Then I ask what it means when we speak of "abridging" the rights and immunities of citizenship. It is a little difficult to say, and I have not heard any Senator accurately define, what are the rights and immunities of citizenship; and I do not know that any statesman has very accurately defined them; but even in reference to that, which of itself is not very certain but to some extent vague, a word is now used, as the Senator says, of uncertain legal meaning. He is willing that we shall say "abridge" the rights and immunities of citizens, but not willing that we shall use the word "abridge" the right of suffrage. Of course, the abridgment of the right of suffrage does not apply to the particular individual when he comes to cast his vote, that he shall cast a part of a vote. It does not

mean that. It must relate to the class that shall enjoy it. An abridgment of the right of suffrage must relate to the class to which it applies or extends.

Mr. President, my purpose in calling attention to this is to say that this proceeding by the amendment of the Constitution is not so safe as it ought to be. What have we witnessed within the last two days? The measure first came from the committee of fifteen, where it was considered for long sessions of the committee, and brought before us as it was claimed, in a very perfect state. A little discussion showed that it would not stand the test. Senators were opposed to this and that of the different propositions. Then it went to a peculiar assembly, and was considered there. It comes back, and even the Senator who brings in the report is now dissatisfied. The Senator from Ohio [Mr. SHERMAN] yesterday admitted that he was dissatisfied; that it was not what he desired. The Senator from Illinois, [Mr. YATES,] so very able and eloquent today, says it is not what it ought to be; and I desire to say, in explanation, that the criticism that I made yesterday on the position of the Senator from Ohio does not apply to the Senator from Illinois. The Senator from Illinois did not understand the logical force of the point which I made. I did not say that when a proposition is before a body, if an amendment is offered to that proposition, and you lose your amendment, therefore you must necessarily vote against the original proposition because you cannot get the best that you think might be done. My point upon the Senator from Ohio was this, that the original proposition being here, and an amendment offered by the Senator from Wisconsin, the Senator from

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Ohio said in his place that the amendment was the better of the two propositions, but he was going to vote against an amendment which was better than the original proposition. That is the very reverse of the position occupied by the Senator from Illinois. I acknowledge that the position of the Senator from Illinois is a very correct one. I do not choose to vote against a measure simply because an amendment which I think would improve it is defeated, if the original measure commands my judgment.

Now, sir, this measure, which I believe can accomplish no good for the country, is condemned in part by the Senator from Ohio, in part by the Senator from Illinois, in part by the Senator who now proposes an amendment; but all three of these Senators say they will vote for it, not that it is right, but that it is the best they can get under the circumstances. I do not expect the judgment of each man to be perfectly satisfied with every proposition; but, sir, the Constitution ought not to be amended for the purpose of making a platform for a political campaign. The Constitution of the country ought to be amended that it shall be the permanent fundamental law of the country. The embarrassment here is, not that it is difficult to define such general propositions as ought to find their way into the Constitution, but the difficulty in the phraseology here is to include this, and to exclude that, to leave general propositions, to leave a principle, and to fix up a thing for a particular purpose. When the Senator from Michigan says that the southern negroes ought not to be counted if they are regarded as unfit to be voters, I understand that proposition; but when he turns around and says that the people of Missouri, who are decreed by the rest of the people of that State as unfit to be voters, shall be represented, I do not understand such a proposition; and where you undertake to express opposite thoughts in the same sentence you find difficulty of phraseology. If you will say in plain words that nobody shall be represented in Congress who is not, recognized by the State as a voter, I understand it; but when you say that a man in the State of Georgia shall not be represented because the people of Georgia count him unfit to be a voter, and in the State of Missouri, a man, who is counted as unfit to be a voter, shall be represented there, I do not understand the principle. When you have to fix up a Constitution to include some things and exclude others, for partisan purposes, you do find difficulties of phraseology. It cannot be made easy. The difficulty is in the thought, not in the use of the English language; and that is the very difficulty that we hate in this case. How do you want to "abridge" the right of suffrage? What is meant by it? What is meant by "abridging" the rights and immunities of citizens? We do not know, the Senator from Michigan says. Why shall we allow representation to a non-voter in one State, and disallow it in another, upon principle? You say that the negro in Georgia, because he is not allowed to be a voter by the people of Georgia, shall not be represented, and you say that the criminals, because they are criminals, in Missouri, excluded from the right of voting, shall be represented. Where is the principle and the right of it?

Sir, this thing will be discussed before the people. Although it is clothed in doubtful sentences, it will come to be understood. I believe the people of this country are just; and I do not think the people of this country will say that the voter in Missouri ought to represent two men, when the voter in another State is denied that. But, sir, my purpose was simply to suggest to the distinguished Senator from Michigan that the same doubtful word was used in the first section that he objects to in the second.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Michigan to the

amendment of the Senator from Oregon,

Mr. EDMUNDS. I ask that the question may be divided, so that the vote on striking out the words "or in any way abridged" may be taken separately.

The PRESIDING OFFICER. That is a separate amendment. The question now is on the first amendment offered by the Senator from Michigan to the amendment of the Senator from Oregon.

The amendment to the amendment was rejected.

The PRESIDING OFFICER. The question now is on the second amendment offered by the Senator from Michigan to the amendment made by the Senator from Oregon, which is in line eight of the amendment to strike out the words "or in any way abridge."

The amendment to the amendment was ejected.

The PRESIDING OFFICER. The question now is on the amendment of the Senator from Oregon.

The amendment was agreed to.

Mr. CLARK. I now move the amendment which I have heretofore offered striking out the fourth and fifth sections of the resolution and inserting a substitute; and I desire to modify the substitute by striking out the word "forever," in the last line, which does not add anything to its force.

The Secretary read the proposed substitute for the fourth and fifth sections, as follows:

Sec. —. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

Mr. JOHNSON. I do not understand that this changes at all the effect of the fourth and fifth sections. The result is the same.

Mr. CLARK. The result is the same. The amendment was agreed to.

Mr. FESSENDEN. I desire to insert in the first section, by general consent, after the word "born," the words "or naturalized;" so that the clause will read:

All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside.

Mr. HOWARD. There is no objection to that. The amendment was agreed to.

Mr. DOOLITTLE. I now offer the amendment which I gave notice of, the effect of which is to submit these separate sections as so many separate articles, any of which may be accepted or rejected by the States. I move to strike out all after the enacting clause of the resolution and to insert the following:

That the following articles be proposed to the Legislatures of the several States as amendments to the Constitution of the United States, which, or either of which, when ratified by three fourths of said Legislatures, shall be valid as part of the Constitution, namely:

ARTICLE— All persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

ARTICLE— Representatives shall be apportioned among the several States which may be included within the Union according to their respective number, counting the whole number of persons in each State, excluding Indians not taxed. But whenever, in any State, the elective franchise shall be denied to any portion of its male inhabitants, being citizens of the United States, not less than twenty-one years of age, or in any way abridged, except for participation in rebellion or other crime, the basis of representation in such State shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens not less than twenty one years of ago in such State.

ARTICLE— No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two thirds of each House, remove such disability.

ARTICLE— The obligations of the United States incurred in suppressing insurrection, or in defense of the Union, or for payment of bounties or pensions incident thereto, shall remain inviolate.

ARTICLE— Neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim on account of the loss or emancipation of any slave; but all such debts, obligations, and claims, shall be forever held illegal and void.

ARTICLE— The Congress shall have power to enforce, by appropriate legislation, the provisions of these articles.

I shall not make any speech on this subject. I simply state the fact that this is in accordance with the precedents. The first amendments to the Constitution submitted to the States were twelve in number, and they were submitted as separate articles. Ten of them were adopted; two of them were rejected by the States. All the other amendments that have ever been submitted have been submitted as separate articles.

Mr. JOHNSON. And the language was the same, "or either of them."

Mr. DOOLITTLE. I have not the acts before me, but that is so. The reason is obvious. In all legislation a single member has the right to demand a vote on every single proposition; and as these distinct propositions are to be submitted to the Legislatures of the several States, they ought to be submitted in such a way that they may ratify or reject either of the propositions. Now, they are entirely distinct from each other; the first defining citizenship; the second on the subject of representation; the third in relation to disfranchisement; and, as amended, the fourth and fifth sections are combined in one, having reference to the public debt and the rebel debt. They are all distinct, independent propositions. They ought not to be submitted in such a way that they must all be accepted or all rejected by the States, but the States should be permitted to act upon each of them separately. I will not take up the time of the Senate in discussion, because I know the desire is to vote.

Mr. TRUMBULL. The amendment submitted a year ago was in two sections; so that this is not without precedent.

Mr. DOOLITTLE. The last section was simply to enforce the first.

Mr. JOHNSON. They were not disconnected at all.

Mr. TRUMBULL. I merely mention this to correct the statement of the Senator.

Mr. DOOLITTLE. It was substantially the same, and gave no other power but to enforce the first; that is all.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Wisconsin.

Mr. JOHNSON. On that question I ask for the yeas and nays.

The yeas and nays were ordered; and being taken, resulted — yeas 11, nays 33 ; as follows:

YEAS—Messrs. Cowan, Davis, Doolittle, Gnathrie, Hendricks, Johnson, McDougall, Norton, Riddle, Saulsbury, and Van Winkle—11.

NAYS—Messrs. Anthony, Chandler, Clark, Conness, Cragin, Creswell, Edmunds, Fessenden, Foster, Grimes, Harris, Henderson, Howard, Howe, Kirkwood, Lane of Indiana, Lane of Kansas, Morgan, Morrill, Nye, Poland, Pomeroy, Ramsey, Sherman, Sprague, Stewart, Summer, Trumbull, Wade, Willey, Williams, Wilson, and Yates—33.

ABSENT—Messrs. Brown, Buckalew, Dixon, Nesmith, and Wright—5.

So the amendment was rejected.

Mr. DAVIS. I desire to move an amendment to the third section.

The PRESIDING OFFICER. The Chair understands that the third section being an amendment agreed to in committee, it is not in order to amend it now, but it will be in order when the joint resolution shall be reported to the Senate.

The joint resolution was reported to the Senate as amended.

The PRESIDING OFFICER. The resolution is now open to further amendment.

Mr. DAVIS. I now move to amend the third section, in line thirty-three, by striking out the words "or under any State," and in lines thirty-five and thirty-six by striking out the words "or as a member of any State Legislature or as an executive or judicial officer of any State" so that it will read:

Sec. 3. That no person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, who having previously taken an oath, as a member of Congress or as an officer of the United States, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort

to the enemies thereof. But Congress may by a vote of two thirds of each House remove such disability.

I have barely a word to say in explanation of this amendment. This section operates upon all officers, both of the United States and of the States, who took an oath to support the Constitution of the United States, and it excludes them from office in the future, as well in the States as in the United States. The object of my amendment is simply to limit the effect of the violation of the Constitution to cases where the officer who took the oath was a United States officer, to exclude the ineligibility from State officers, and to restrict it entirely to Federal officers.

The amendment was rejected.

Mr. DAVIS. I have another amendment to offer. It is to insert at the end of section four:

But the obligation of the United States to pay for private property taken for public use in all cases shall remain inviolate.

I will explain this amendment in a word. Section four reads as follows:

The obligations of the United States incurred in suppressing insurrection, or in defense of the Union, or for payment of bounties or pensions incident thereto, shall remain inviolate.

Mr. HENDERSON. That has been stricken out.

Mr. CLARK. But it has been inserted again in another form.

Mr. DAVIS. The effect of my amendment is simply to insert a provision that the obligation of the United States for the payment of private property taken for public use shall also remain inviolate.

The amendment was rejected.

Mr. DAVIS. I have one more amendment and then I have done. I send it to the desk.

The PRESIDING OFFICER. The Chair understands that the amendment that the Senator proposes is to a part that has been stricken out, and does not apply and cannot be made to apply to the text as it now stands, and therefore is not in order.

Mr. DAVIS. I will inquire if there is not inserted in lieu of that which is stricken out something to the same effect.

The PRESIDING OFFICER. Something to the same effect has been inserted, and the amendment can be made to apply to that.

The Secretary read the amendment, which was in section four, line three, after the word "bounties," to insert the following words:

Including bounties promised to the owners of slaves enlisted into thq military service of the United States by the act of Congress of February 29, 1864.

Mr. CLARK. That amendment is in order.

Mr. DAVIS. I have but a word to say on the amendment. The Congress of the United States passed an act which I have before me, but which I will not read, in which they pledged the payment of certain bounties to the loyal owners of slaves that might be enlisted into the armies of the United States either from volunteering or by being drafted. I merely propose a guarantee in this clause for the payment of those bounties.

The amendment was rejected.

The PRESIDING OFFICER. The question is on concurring in the amendments made as in Committee of the Whole. The question will be taken on all the amendments collectively unless some Senator desires a separate vote. ["Altogether."]

Mr. HOWARD. I wish to reserve the amendment to the second section for a separate vote.

The PRESIDING OFFICER. That amendment will be reserved.

Mr. JOHNSON. There are two or three of these sections that I should be willing to vote for, but I cannot vote for the whole. I think, therefore, we had better take the vote separately.

Mr. SHERMAN. I think we had better take the vote on the sections separately.

The PRESIDING OFFICER. Does the Senator ask for a separate vote on all the amendments?

Mr. SHERMAN. I ask that each section be read, and that the vote be taken on them separately.

Mr. GRIMES. That cannot be done, as I understand. They are all embodied in one resolution. The idea suggested by the Senator from Ohio is substantially the proposition of the Senator from Wisconsin, which was voted down. I know that his proposition was to submit these sections as articles to the States separately; but all these propositions are before us in one joint resolution.

Mr. SHERMAN. Each section has been amended, and as a matter of course we can act on them separately.

Mr. GRIMES. You can act on the amendments separately.

The PRESIDING OFFICER. The question is on concurring in the amendments made as in Committee of the Whole, and the question must be taken on each amendment separately if called for by any Senator. The first

amendment will be read.

The Secretary read the first amendment, which was to insert at the beginning of the first section the following words:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

Mr. McDOUGALL. I move that the resolution under consideration be postponed until Tuesday next at one o'clock.

Mr. FESSENDEN. It was agreed yesterday that we should take the vote today.

Mr. HOWARD. I hope it will not be postponed. It was understood that we should come to a final vote today.

Mr. McDOUGALL. In making the motion, I wish to give the reason why I make it. This business of amending the Constitution should be carefully done; and about many of these provisions I am myself still in great doubt, though I have looked at them as carefully as I could. I do not think we should hasten constitutional amendments. It takes a great deal of hard work to get out foundation stones, and now we are undertaking to lay foundation stones. I say the measure had better be manipulated a little more than it has been, so that we may know that we do exactly right whether we affirm or disaffirm the proposition.

Several Senators. Let us vote.

Mr. McDOUGALL. I am not disposed to vote upon it at all. Of course I can be subjected to the power of a majority as organized in caucus; but I must say it is the first time in the history of this Republic that legislative matters and great constitutional questions were settled in party caucus. That has transpired for the first time in our history during the recent war and during the past and present Administrations. It deprives men of the right of counsel. Those who have the violence and strength of the majority can exert it; but I have a right to be heard upon all these questions. There is no party organization that has the right, under our system of government, to so organize themselves that they shall supersede the system under which our Government was established, and when they do it it is an act of tyrannous power. It is glorious to have a giant's power, but tyrannous to use it like a giant.

The motion to postpone was not agreed to.

The PRESIDING OFFICER. The question is on concurring in the amendments made as in Committee of the Whole to the first section of the proposed article.

The amendments were concurred in.

Mr. JOHNSON. I am decidedly in favor of the first part of the section which defines what citizenship shall be, and in favor of that part of the section which denies to a State the right to deprive any person of life, liberty, or property without due process of law, but I think it is quite objectionable to provide that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States," simply because I do not understand what will be the effect of that.

Mr. FESSENDEN. We have agreed to that.

Mr. JOHNSON. I understand not.

Mr. CLARK. We have concurred in the amendments made as in Committee of the Whole to the first section.

Mr. JOHNSON. That is all. You have not agreed to the words to which I now object. I move, therefore, to amend the section as it now stands by striking out the words "make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State;" so as to make it read:

No State shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Mr. CONNESS. Have all the amendments made as in Committee of the Whole been voted upon?

The PRESIDING OFFICER. They have not been.

Mr. CONNESS. Are they not first in order?

Mr. CLARK. Oh, we may as well vote on this amendment now as it is moved; it saves time.

The amendment was rejected.

The PRESIDING OFFICER. The next amendment made as in Committee of the Whole was to strike out the second section and insert a substitute for it, which will be read.

Mr. HENDRICKS. The will of the Senate in regard to these amendments has been so emphatically expressed that I think we may as well take the vote on all of them without reading them. We all know what they are.

Mr. FESSENDEN. The Senator from Michigan called for a separate vote.

Mr. HOWARD. Only upon this amendment.

Mr. HENDRICKS. Then upon the others let us have one vote and be done with them.

Mr. TRUMBULL. The question now is on striking out the second section and inserting another. Let us have

the yeas and nays on that.

The yeas and nays were ordered.

Mr. GRIMES. Is the question on concurring in the amendment or striking it out?

The PRESIDING OFFICER. On concurring in the amendment.

Mr. TRUMBULL. The question is on striking out the second section and inserting that amendment instead of it.

Mr. FESSENDEN. We made the amendment in committee. Now the question is on concurring in it.

Mr. TRUMBULL. Very well, but concurring in that strikes out the second section and puts in another section in place of it. Those who are in favor of striking out the second section as it was printed and inserting what was offered by the Senator from Oregon [Mr. Williams] will say "ay," and those who are in favor of adhering to the section as it is printed will say "no."

The question being taken by yeas and nays, resulted—yeas 31, nays 11; as follows:

YEAS—Messrs. Anthony Clark, Conness, Cowan, Cragin, Creswell, Doolittle, Edmunds, Fessenden, Foster, Grimes, Harris, Henderson, Howe, Johnson, Lane of Kansas, McDougall, Morgan, Merrill, Norton, Nye, Poland, Pomeroy, Ramsey Sherman, Stewart, Sumner, Van Winkle, Willey, Williams, and Wilson—31.

NAYS—Messrs. Chandler, Guthrie, Hendricks, Howard, Kirkwood, Lane of Indiana, Saulsbury, Sprague Trumbull, Wade, and Yates—11

ABSENT—Messrs. Brown, Buckalew, Davis, Dixon, Nesmith, Riddle, and Wright—7.

So the amendment to the second section was concurred in.

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Several SENATORS. Now let us vote on all the other amendments together.

The PRESIDING OFFICER. If such be the pleasure of the Senate, the question will be taken collectively on all the other amendments.

Mr. JOHNSON. I hope not. I want a separate vote on the third section.

The PRESIDING OFFICER. That is the next section.

Mr. HENDRICKS. I do not understand this. Can this resolution be adopted by voting on sections separately?

Mr. FESSENDEN. No.

The PRESIDING OFFICER. The Senate is now concurring in amendments made as in Committee of the Whole.

Mr. SHERMAN. No amendment was made to the third section.

Mr. HENDRICKS. That is what I want to understand. I understand that there is no amendment from the Committee of the Whole to the third section.

Mr. FESSENDEN. Yes, we struck out the third section as reported and inserted a substitute for it.

The PRESIDING OFFICER. The question is on the amendment made as in Committee of the Whole to the third section.

Mr. JOHNSON. I ask for the yeas and nays on that.

The yeas and nays were ordered.

Mr. SHERMAN. The third section was the original section that came from the House disfranchising the southern people from voting. That has been stricken out.

Mr. HOWARD. The question is on concurring in the amendment we made to the third section.

Mr. SHERMAN. That was to strike out the third section which came from the House and insert another.

The question was taken by yeas and nays, with the following result:

YEAS—Messrs. Anthony, Chandler, Clark, Conness, Cowan, Cragin, Creswell, Davis, Doolittle, Edwunds, Fessenden, Foster, Grimes, Guthrie, Harris, Henderson, Hendricks, Howard, Howe, Kirkwood, Lane of Indiana, Lane of Kansas, McDougall, Morgan, Morrill, Norton, Nye, Poland, Pomeroy, Ramsey, Saulsbury, Sherman, Sprague, Stewart, Sumner, Trumbull, Van Winkle, Wade, Willey, Williams, Wilson, and Yates—42.

NAY—Mr. Johnson— .

ABSENT—Messrs. Brown, Buckalew, Dixon, Nesmith, Riddle, and Wright—6.

Mr. HENDRICKS, (before the result was announced.) I think the vote just taken is not correctly understood.

The PRESIDING OFFICER. No discussion is in order; the vote has not been announced.

Mr. HENDRICKS. I am not going into any discussion, but I have a right to ask of the Chair the precise question in time to let any gentleman change his vote if he desires to do so. The motion was not originally to strike out the third section as it came from the House and to insert another. They were separate motions. Then

ought there not to be two votes upon this section now?

Mr. SHERMAN. I suppose any Senator can call for a division.

Mr. HENDRICKS. There is no need to call for a division because there were two distinct motions. There was first a motion to strike out and afterward a motion to insert something else. Now, the precise question before the Senate is whether the third section as it came from the House shall be stricken out, and then there will be another question not yet voted upon by the Senate, whether we shall insert the third section which was agreed to as in Committee of the Whole. That is the way it stands.

Several SENATORS. Oh, no.

Mr. JOHNSON. Mr. President—

Mr. CONNESS. I object to discussion at this time.

The PRESIDING OFFICER. The discussion is not in order; the vote has not been announced.

Mr. JOHNSON. I am not about to discuss the question. The Senator from California need not suppose that I propose to occupy the time of the Senate unnecessarily. I proposed to strike out the original third section as it came from the House.

Mr. CONNESS. I rise to a question of order. It is not in order to discuss a question after the call of the roll has been commenced.

The PRESIDING OFFICER. The result of the vote has not been announced, but the roll has been called.

Mr. JOHNSON. If I am not in order I will take my seat; but it is barely possible that the Senator from California may not be in order.

Mr. CONNESS. I am quite aware of that; but I believe I have a right to raise the question of order.

Mr. JOHNSON. I do not object to that.

Mr. CONNESS. Very well; then let the Chair decide.

The PRESIDING OFFICER. No discussion is in order until after the vote is announced; but, by common consent, Senators may be allowed to explain their own votes, but no extended remarks can be allowed.

Mr. CONNESS. There is no right to explain a vote.

Mr. JOHNSON. I moved to strike out the third section as it came from the other House. That motion was carried, and afterward what now appears upon the face of the resolution as the third section was proposed and adopted as a separate amendment. I voted just this moment to strike out what was adopted. The effect of that would have been to restore the original third section, perhaps, but I meant when that was done to move to strike out the third section so as to leave no such section.

The PRESIDING OFFICER. On this question—

Mr. HENDRICKS. What question?

The PRESIDING OFFICER. The question was on concurring in the amendment made as in Committee of the Whole, which was to strike out the third section and insert other words in lieu of it. The result of that vote is 42 in the affirmative and 1 in the negative. So the amendment is concurred in. The Secretary will read the next amendment.

The Secretary read the next amendment, which was to strike out the fourth and fifth sections, and to insert the following section in lieu of them:

Sec. — The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

The amendment was concurred in.

The amendments were ordered to be engrossed and the joint resolution to be read a third time. The joint resolution was read the third time.

The PRESIDING OFFICER. This joint resolution having been read three times, the question is on its passage.

Mr. JOHNSON. I ask for the yeas and nays.

Several SENATORS. The yeas and nays must be taken, of course.

The yeas and nays were ordered; and being taken, resulted — yeas 33, nays 11, as follows:

YEAS—Messrs. Anthony, Chandler, Clark, Conness, Cragin, Creswell, Edmunds, Fessenden, Foster, Grimes, Harris, Henderson, Howard, Howe, Kirkwood, Lane of Indiana, Lane of Kansas, Morgan, Morrill, Nye, Poland, Pomeroy, Ramsey, Sherman, Sprague, Stewart, Sumner, Trumbull, Wade, Willey, Williams, Wilson, and Yates—33.

NAYS—Messrs. Cowan, Davis, Doolittle, Guthrie, Hendricks, Johnson, McDougall, Norton, Riddle, Saulsbury, and Van Winkle—11.

ABSENT—Messrs. Brown, Buckalew, Dixon, Nesmith, and Wright—5.

The PRESIDING OFFICER. The joint resolution is passed, having received the votes of two thirds of the Senate.

SPEECH OF HON. T. O. HOWE,
of WISCONSIN,
IN THE UNITED STATES SENATE,
June 5 and 6, 1866.

The Senate having under consideration the blot' resolution (H. R. No. 127) proposing an amendment to the Constitution of the United States—

Mr. HOWE said:

Mr. PRESIDENT: At some time during this debate I purposed to state to the Senate my apology for the vote I am going to give. Perhaps the Senate would as lief listen to it this afternoon, or at least as lief allow me to state it this afternoon as at any time.

I am going to vote for the constitutional amendment now pending. I shall vote for it regretfully, but not reluctantly. I shall vote for it regretfully, because it does not meet the emergency as I hoped the emergency would be met; but I shall not vote for it reluctantly, because it seems to me just now to be the only way in which the emergency can be met at all.

Mr. President, in January last I submitted to the Senate a resolution which contained an embodiment of my own idea of the duty devolved upon Congress in this juncture. By that resolution I proposed to employ the legislative power of the nation to organize provisional governments for each of those communities which had destroyed, each for itself, the only government which the Constitution of the United States permits to a State of the American Union. That resolution was made the occasion of considerable debate, but never yet has attained to the honor of a reference to a committee. Perhaps it is the only instance on record of a resolution being offered to this body without sufficient merit to secure a reference. And since that resolution seems destined to remain here and to haunt the Senate Chamber without the poor right of burial in a standing or a special committee, and since I myself this afternoon am about to part company with it, and to embrace the idea embodied in the report of the committee of fifteen, I desire to say once more, for the satisfaction of all who may hereafter meet the ghost of my poor resolution stalking about among the archives of the Senate Chamber, that in my judgment, after having been intimate with it for a very long time, it is a perfectly honest ghost, and I desire to say more, that after considering carefully and diligently each one of the plans which have been submitted here time after time —rather ghostly, it seems to me, all of them — my own plan is still my favorite.

I want to say one thing more: that, instructed as I am now by a debate of more than four months' duration, a debate which has employed the best intellect of the country here and elsewhere, the single idea submitted in that resolution is, in my judgment, the only plan of which it can be truly said that it is entirely consistent with itself. If it be objected to it, that it is not consistent with the Constitution, then I am bound to say to the Senate that no plan yet submitted here or acted upon elsewhere is consistent with the Constitution.

If that resolution cannot be defended upon constitutional grounds, neither can the proposition of the Senator from Nevada or the plan now submitted by the committee of fifteen be defended. And no plan is so utterly defenseless as that of the President himself. They tell us that these States are still in the Union, and that my resolution would drive them out of the Union. Not at all, sir, the furthest from it possible. We do not look to statutes to see what is or is not within the Union. The boundaries of the Union are defined by treaties. Louisiana is in the Union, because by treaty with France we secured her to the Union. Texas is within the Union, because by treaty with Mexico we secured her to the Union. And these States, if you please to call them so, these communities, as I call them, will remain in the Union until by treaty with some Power outside or organized inside we consent to let them go out of the Union.

It is said that such a resolution as I proposed would effect the very object at which the rebellion was aimed. What was that? They aimed, if I understood their purpose, to throw off utterly and altogether the authority of the United States. Their proclamation was that within their respective limits the United States should exercise no control whatever. The resolution which I submitted to the Senate asserted, on the other hand, that the United States within those respective limits should exert the sole control for the time being. Is there no difference between the two propositions? We called them traitors because they denied that the United States had any authority within their limits. Is it traitorous to say that the United States has more power than it had before they raised the standard of rebellion?

But if it be not disloyal to the United States to assert that stretch of authority on its part it is said it is disloyal to the States; that it tramples upon the rights' of the States. How does it trample upon the rights of States? I admit, of course, that the authority of this Government is limited. I admit that we can exercise no authority but what is delegated to us in the Constitution. I admit that all the rest of the authority belonging to Government is reserved to the States. We have no quarrel and no dispute upon these points. I admit that the right of representation is a right which is given by the Constitution to the several States. But I desire to say once more to the Senate that that right of representation is not a right given to all States. Nobody claims it for any State outside of the American Union, and I say it belongs to no State inside of the American Union unless it conforms to the conditions which the Constitution imposes upon every State. When those conditions are set aside and abjured, then that right falls. It can be claimed by no State inside of the Union unless it be conceded to the State first by the Congress of the United States. It is the lack of that concession which prevents Colorado from having representation here today. She claims to be a State. She has adopted her constitution. She has sent here her representatives. The two Houses have agreed by a majority of their votes to admit them. But the President has vetoed the bill, and so there is upon the statute-book no law authorizing them to send representatives here, and they are not received. But does that exclude Colorado from the Union, or does it trample upon the right of a State? That right has never been conceded to her by Congress yet, and she does not insist upon the exercise of it until it be conceded.

But you tell me this right has been conceded once by Congress to Louisiana, to Mississippi, and to Alabama. Yes, Mr. President, it was conceded once to those communities and to each of the others which have been in rebellion. How, then? Answer me, what is the consequence of that? When the right and the character of a State was conceded by an act of Congress to the State of Alabama or the State of Mississippi, did the United States stipulate forever thereafter to exercise none of the powers which she had before exercised in those limits under any circumstances whatever? When Congress first conceded the right to Alabama to send her representatives here, was that a right which continued to her under all circumstances whatever beyond the power of forfeiture? If so, you must concede that that right remained during the very heat and strife of the war. If she could not forfeit that; if it was a continual, perpetual right, your doors would have been bound to swing open at the knock of her representatives, if she sent them here when the war was at its height, and you were protected against having representatives from your direst and deadliest enemies in these Halls only by the simple circumstance that they were a little too chivalrous or not sufficiently impudent to send them here to claim the right.

It will not be asserted that that right cannot be forfeited. No Senator on this floor who really loves the authority of this Government and means to abide by it and uphold it will pretend that Alabama, while this war was waging, could send her representatives here. "Oh," but you say, "why not let her send them here if they were loyal?" Why, sir, Alabama, while she was disloyal, would not choose loyal representatives, but if she did choose loyal representatives her representatives could not come this side of her lines without the permission of your Army. It was an offense against the laws of the United States for any man, no matter what were his personal dispositions, to come through those lines without the permission of the Government. There was a wall built up between everybody on that side and on this; not merely Congress, but your military boundaries were closed against every man, let his personal dispositions be what they might, coming from the rebellious districts.

But, Mr. President, I say that this right conceded to those States was not an absolute, unconditional, continuing right. It is a right to be exercised only under certain conditions. Every State claiming the right to send representatives here must show, first, the authority of Congress to do it; secondly, must show that they have a government, administering their own local affairs, which is republican in form; thirdly, it must be a State which has no engagements and no treaties either with another State or with any foreign Power; for that is expressly prohibited by the Constitution to all States; and fourthly, it must have a government, every officer of which, executive, legislative, and judicial, must be under an oath to support the Constitution of the United States; because the Constitution expressly forbids that any authority of government shall be wielded in any State by officers who are not under such an oath.

I insist that whenever a State violates either of these conditions it forfeits in law, and Congress may declare a forfeiture in fact, of the right to make its own laws, and of the right to participate in making our laws. Congress may declare that forfeiture in fact, because if you have not the authority to declare that forfeiture you cannot enforce these clauses of the Constitution. If the State of Mississippi sees fit to set up a government which is not republican but monarchical in form, to vest all the local power in the hands of a single individual for life, and in his heirs, and if you cannot interfere with the exercise of that authority by such a tribunal, by such a form of government, and strip him of it by an act of Congress, that clause of the Constitution is a dead letter. There is no other remedy to cure such a wrong as that. And so if they make treaties with other States or with foreign Powers;

and so if they refuse to let their officers take the oath to support the Constitution of the United States, unless you have the power to resume the function which you delegated to her as a State, you cannot enforce those three commandments of the Constitution.

Sir, I admit it is hard to degrade a State to a Territory; I admit it is a harsh remedy to take the prerogatives of a State from a great community; but it is not so harsh after all as to take their lives; and when by the express words of your statute they forfeited their lives and you remit them that, is it worth while to talk of the harshness of taking these prerogatives of government from them?

But you say that although this right of local government is forfeited by the disloyal majority, it still lives in the loyal minority. I should say it was a very harsh and unjust remedy to take wantonly the prerogatives of a State from a loyal minority, simply because the majority about them were disloyal and traitorous. It has been said, where you find ten loyal men in a State there is the State, and you must let it be and exist. Mr. President, there is some plausibility in that. I meet it by asking where you can, in any one of these communities, find the local power in the hands of ten loyal men. Nay, I ask you where, in any one of these communities, outside of Tennessee, and perhaps Arkansas, you can find ten loyal men exercising any portion of that local authority? Loyalty is not tolerated in these local governments. Talk to the American Congress about stripping loyal men of authority in South Carolina or elsewhere! Loyal men have no authority there, they have had no authority from the beginning of this struggle. Talk about the harshness to the loyal men of taking the prerogatives of States from these communities! I do not see the hardship to loyal men. Every particle of local authority vested by the Constitution in a State had been secured to the hands of traitors, and by the exercise of that power they had forced whatever of loyalty there was in the community into an unholy and unwilling subserviency to the cause of rebellion. Is it harsh to loyal men to take power from the hands which use it thus? I do not conceive it to be so. When we take power from or deny power to the majority in these rebellious States, we simply deny it to the worst enemies the loyal men in these communities have or can have; and when we find that power in the hands of their direst enemies, to wrest it from them, it seems to me, is not only the highest duty which we owe to them, but for it we have the clearest warrant of the Constitution.

I do not agree with the Senator from Vermont [Mr. Poland] that the framers of the Constitution never contemplated such an emergency as this, and therefore never provided for it. I say, in the express letter of the Constitution you have the authority to do just what I ask to have done. I will read it. After enumerating certain express powers which Congress may exercise, the Constitution declares that it shall have power—

"To make all laws which shall be necessary and proper for carrying into execution the foregoing power and all other powers vested by this Constitution in the Government of the United States or in any department or officer thereof."

If the power which that resolution asserted is not given there you cannot frame a clause which would clothe Congress with that power more clearly.

Mr. President, upon this question I have said all, perhaps more than I ought to have said. The question has passed from the consideration of Congress. There were difficulties outside of the Constitution in the way of the exercise of that authority, no matter how clearly it resided in the Congress of the United States. When Congress met here the President of the United States himself had for months been busy with the work that he called reconstruction. He had exercised, himself, the very authority which I claimed for Congress. He had abolished every one of those governments by a word of his mouth, and had done just what I asked Congress to do — established provisional governments. He had taken steps to supersede those which he called provisional governments with others which he called State governments, but which are today only provisional governments, nothing more nor less.

It has seemed good to the committee of fifteen not to disturb unnecessarily what the President had done, but to take his handiwork and to work it into some complete plan of reconstruction.. Hence, it seems to have been thought advisable by them to let these organizations stand or stagger as they might, to do what they could with the work of home government, and to take the question from that point and settle if they could some terms upon which the other right, the right of representation, should be conceded to them by Congress. They have finally submitted, or there is submitted to the Senate, a joint resolution for an amendment of the Constitution of the United States. Allow me briefly to run over its propositions.

It first proposes to declare that "all persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside." That is the first proposition. Is there any objection to it? The Senator from Indiana [Mr. Hendricks] yesterday, I think, assailed this proposition as one calculated to degrade the great right of American citizenship, a right which he seemed to think should be held

exclusively to the use and behoof of the nobler and loftier races of the world. It degrades, does it, sir, the character of American citizenship to admit all men to it who are born and reared upon American soil? Mr. President, I dissent from that idea altogether, and I was surprised to hear it fall from the lips of the Senator from Indiana, of all men in the world. I thought he was a Democrat. I thought he boasted himself the champion of equal rights. I thought that was the bread and the meat and the drink of his political creed. I did not think he belonged to that class of nobility that measure their exaltation by the number of negroes they have under their heels. I did not suppose he felt it necessary to stand upon the necks of human beings in order to secure his patent of nobility; and I was surprised to hear this sentiment fall from his lips. I differ from it so widely and so radically as this, that I say there is no one proposition in the proposed amendment, and nothing in the Constitution as it stands, which will do so much to elevate the character and the dignity of American citizenship as that simple proposition. Nay, sir, I go further, and I tell you you will never have occasion to boast but you will always have occasion to blush for American citizenship until the time shall come when you can say to all the world that American institutions do not raise a man that is not worthy to be an American citizen and is not clothed with its panoply. I will vote for this proposition, and I shall not fear that American citizenship will be degraded by incorporating this clause in the Constitution.

It proposes further to say that—

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sir, does any one object to putting that proposition into the Constitution? Does any one on this floor desire to reserve to any State the right to abridge the privileges or immunities of citizens? Do you do it in the State in which you reside, sir, [Mr. Hendricks in the chair,] and whose legislation and institutions you have done so much to mold? Is it done in any of the States represented here? I cannot deny it for all of them; but for many of them I do happen to know that no such abridgment of privileges or immunities is tolerated. Is it necessary, however, to incorporate such an amendment into your Constitution? Do you find in any of these communities seeking to participate in the legislation of the United States an appetite so diseased as seeks to abridge these privileges and these immunities, which seeks to deny to all classes of its citizens the protection of equal laws? Yes, Mr. President, I am sorry to say, we do find just such an appetite, and it is necessary to amend your Constitution in this year of our Lord in order to prevent the gratification of that diseased appetite. It is known to the wide world now that but for the authority which has been exerted on the part of the United States most of these communities which now seek the right to participate in our legislation would have denied to a large portion of their respective populations the plainest and most necessary rights of citizenship. The right to hold land when they had bought it and paid for it would have been denied them; the right to collect their wages by the processes of the law when they had earned their wages; the right to appear in the courts as suitors for any wrong done them or any right denied them; the right to give testimony in any court, even when the facts might be within their knowledge — all these rights would have been denied in most if not all of these communities but for the fact, for which I have once before rendered and now again render thanks to the President of the United States, that he sat his face against these provisions or most of them, and said he would not tolerate them nor allow them to be sanctioned in any one of these communities.

Most of these pretenses have been abandoned in most of these communities; but, sir, these are not the only rights that can be denied; these are not the only particulars in which unequal laws can be imposed. I have taken considerable pains to look over the actual legislation which has taken place in these several communities with reference to their several constituencies. I could, it seems to me, interest the Senate for a long time by reading from that legislation, but I shall not delay the Senate longer than to call its attention to a single instance. I read not long since a statute enacted by the Legislature of Florida for the education of her colored people. I read it in a Florida newspaper. The paper boasted itself that Florida was the first State to step forward and attempt the work of educating the children of her colored population. And now, sir, I ask the attention of the Senate to the provision which that Legislature made for the education of their colored population. They make provision for the education of their white children also, and everybody who has any property there is taxed for the education of the white children. Black and white are taxed alike for that purpose; but for the education of colored children a fund is raised only from colored men. It amounts to one dollar a head upon all colored males between the ages of twenty-one and fifty-five years. There were in 1860 between twelve thousand three hundred and twelve thousand four hundred colored males between the ages of twenty and fifty-five in Florida, so that that fund would yield about twelve thousand dollars dedicated to the work of educating the colored children of Florida — not a magnificent

endowment, one would think. But how is it to be expended? First, there is to be a superintendent of colored schools for the State to be paid out of it, and he is to receive a salary of \$2,000. That reduces it essentially. Next, there is to be an assistant superintendent of colored schools for each county at \$200 a year. There are in the State of Florida, I believe, thirty-nine counties, which would give \$7,800 to the assistant superintendents. Add that to the salary of the State superintendent, and it takes \$9,800 from the school fund to pay the superintendents, leaving \$2,200 to pay the teachers. But the fund is not left quite so destitute as that; they require each one of the teachers to pay five dollars to the fund to get a license to teach. They are to be examined, their fitness ascertained, and if permission is given them to teach they are to pay five dollars, and that goes to the fund. That swells it; when that license is purchased they can set up a school. Into that school, however, it is worthy of remark that no child can go without permission of the superintendent or his assistant, and no child can stay a day without the permission of the superintendent or his assistant, and the teacher who has paid five dollars for the permission to teach cannot hold that permission a day longer than the superintendent or assistant superintendent sees fit to allow, for the statute expressly authorizes the superintendent or assistant superintendent to vacate or annul the certificate whenever he shall see fit for incompetency or "other good cause" — any cause which seems good to the superintendent or assistant superintendent.

There, Mr. President, I have submitted to you one of the statutes in one of these States, as you will have them to be, touching one of the great interests not only of this colored population but of the State itself. and I ask you, any of you today, if in view of one such fact as that you dare hesitate to put in the Constitution of the United States a positive inhibition upon exercising this power of local government to sanction such a crime as I have just portrayed.

Again, sir, we propose to change the basis of representation in the different States. We propose to base it still upon numbers; but it is proposed to say that if in any State the right of suffrage is denied to any portion of its male inhabitants over the age of twenty-one years, then a certain portion of the inhabitants of that State shall be excluded from the numbers counted in the basis of representation. Is that objected to? Yes. Is it not just? Will you tell me what reason there is why when three million people inhabiting these States are denied the right to vote for Representatives, other three millions should have a double representation in the Congress of the United States? To all the people who are allowed to choose Representatives in those States we give by this amendment just the representation that we give to the same number of people in any other State. The effect of it simply is to say that those people who are not allowed to choose Representatives shall not be represented. They cannot be represented; it is a physical impossibility. It is no use to talk about three million colored people being represented, when not one of them is consulted in the choice of Representatives. The Representatives chosen for those men are representing some other men, not them.

I am sorry to have to put that clause into our Constitution, as I am sorry for the necessity which calls upon us to put the preceding clause into the Constitution. I wish there was no community and no State in the United States that was not prepared to say with my friend from Nevada that all men may be represented in the Congress of the United States and shall be represented and shall choose their own Representatives. That is the better doctrine; that is the true doctrine. I would much prefer, myself, to unite with the people of the United States in saying that hereafter no man shall be excluded from the right to vote, than to unite with them in saying that hereafter some men may be excluded from the right of representation.

Sir, to the debate which we have had on this question of the right of suffrage I have listened with a great deal of interest. I trust I have derived some instruction from it, but after all it is not so much as I think would have come to me but for the fact that since I have first known politics at all, I think I have known that no State can deny to any large portion of its adult male population the right to vote, the right to an equal voice in the making of its laws and the choice of its officers, without danger to that State, the whole community, as well as great wrong to the individuals excluded.

I know it is said that these colored people who have just been released from slavery down there in these communities are not fit to vote. I admit it. Who is fit to vote? Only the man who always knows how to vote right, and who always will vote right, is really fit to vote; and, tried by that standard, how many of us are qualified to vote? These people, it is said, are very ignorant, very debased, utterly uncultured and untutored. Yes, Mr. President, I believe that is so. Who made them so? The very men who you insist shall have the exclusive right of voting there. Is it more dangerous to be an ignorant man than to make an ignorant man? Tell me that. Is he a more dangerous member of the State who simply is ignorant, than he who having the power to command otherwise makes men ignorant? The men in whose hands you want to pile up authority are the men who have imposed this ignorance upon that black population down there. You say they are degraded. The degradation is not natural to

them; it is imposed upon them, and you know it; and the men who have done it you want to crown. God knows there are no people more unfit to exercise the right of suffrage than they are, except the men who made them such as they are, and those men are still more unfit.

But, Mr. President, I beg leave to say to you that ignorance is not the worst quality that you have to contend with in the State. The man who does not know how to vote is not so unfit to vote, after all, as the man who knows how to vote and will not vote as his convictions dictate. He is the dangerous man. He is the man that imperils all your laws. He is the worst enemy in republican States and in all States. He is the man against whom you have most to guard. The ignorant man necessarily has no predetermination to vote wrong; he is just as willing to vote right as wrong; and he can be instructed to vote right just as readily as to vote wrong if you take the same pains to instruct him in the right that you do to instruct him in the wrong, provided he is honest; and honesty dwells with ignorance just as readily, and, thank God, just as lovingly, as it does with culture, and you will find it there as often.

As I said before, I would much prefer to unite with the people of the United States in laying the command upon all men to permit all men to vote than to concur in laying the command on any portion of our fellow-men to go without the right. If, however, these communities upon whom this provision, it is supposed, will work most disadvantageously, do not like it, the remedy is plain and simple in their own hands. They have only to put the ballot into the hands of these men, allow them to choose Representatives, and Representatives will come here representing the whole of their population.

But again, sir, it is proposed to say that no person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, in short, under the United States who has ever taken an oath to support the Constitution of the United States and then violated that oath and become a traitor to the Government of the United States. That presses hard. That is going to curtail the rights and the privileges of some of the men in these rebellious States. I ask the Senate to pause upon this proposition. I ask the Senate to consider this proposition carefully before they assent to it. It declares that such a man as Jefferson Davis, or Henry A. Wise, or John Slidell, or James M. Mason shall not hereafter hold office under the Government of the United States unless two thirds of Congress shall hereafter concede that privilege to him. It is a pretty harsh thing to say. I feel it keenly; I feel it sensitively. It is precisely what the President, I am told, has said about me and about men who think as I do. It is what the Secretary of the Treasury has said about men who think as I do, that we shall not hold office, offices which they have the control of and can exclude us from. I have all along thought this harsh. I have thought it was especially harsh to be told by the Secretary of the Treasury, who is particularly anxious and has called upon us to remit our test oath so that he can employ traitors in the service of the Government of the United States, that men cannot hold office under him who were guilty of no offense but thinking as I do. I have never considered myself criminal for anything which I think, for any vote which I have given, for any word which I have spoken. Doubtless I am somewhat guilty; but a man so charitable and tolerant as the Secretary of the Treasury, a man whose charity is so broad that it covers all this rebellion and the guilt by which it is accompanied, ought to have charity enough to forgive such political sins as mine.

Sir, do not make this declaration unless you think it is just. I shall vote for it, because I feel as the Senator from Kansas [Mr. Lane] said the other day he felt, that men who have forfeited their necks to the halter can very well afford to commute by refraining from taking office for a short time. I do not think the Government of the United States can be accused of a great want of magnanimity when it does no more than to take traitors down from the scaffold, even if it does neglect to confer office and dignity upon them for the time being, and so I shall vote for this proposition.

But again, we propose to declare that the obligations of the United States incurred in suppressing this rebellion shall be met as honest men meet all their obligations. I will not argue that proposition to the Senate. I do not know that it is likely to be opposed. We propose to say, furthermore, that the debt which has been incurred in the effort to overthrow the Government of the United States shall not be paid; nor shall the United States ever be taxed to pay the value of the slaves we have made free, and were compelled to make free, to save the life of the nation.

Upon the features of this amendment I propose to spend no further time. It is of no value, we are told, unless the people adopt it. That is true. Will the people of the several States assent to this amendment of the Constitution? I do not know. I am not endowed with the gift of prophecy. I cannot tell. It ought to become a part of your Constitution; that I know; and I am very much in the habit of thinking that what ought to be done will be done. But what alternative is there? These communities have no representatives upon this floor; they wish to have them; we want them to have representation here. They ought to have them. Let them assent to these most

reasonable, most just, and most necessary propositions, and representation will be conceded to them. There is no alternative that I know of except that presented in what is called the President's policy.

Mr. HOWARD. What does that mean?

Mr. HOWE. What does that mean? It means this: that although these people are not fit to make laws at home, and cannot be allowed to make them, yet they must be allowed to send representatives here to participate in making laws for the United States. That is what it means.

Sir, we have heard a good deal about the President's policy. I should not feel called upon to review it here but for the fact that it is held up to us as a model plan, because it so sacredly and religiously respects the rights of States. It respects the rights of States, and therefore is constantly held up before us as being utterly at variance and at war with the idea which I submitted in January last. Why, Mr. President, it is upon all fours precisely what that idea was, except that the President established the provisional governments, while I thought that Congress should establish them.

The first act of the President with reference to these communities was to overthrow every semblance of government within them. The second act was to concentrate every particle of that local authority in the hands of a single man appointed by him in each one of those communities. That is what you call respecting the rights of States, is it? That is the way you would have the rights of States respected! Listen to a clause of that organic law which the President enacted for the government of these communities. Omitting the preamble which recites his reasons for the step he was about to take, he proceeds to say:

"Now, therefore, in obedience to the high and solemn duties imposed upon me by the Constitution of the United States, and for the purpose of enabling the loyal people of said State to organize a State government, whereby justice may be established, domestic tranquility insured, and loyal citizens protected in all their rights of life, liberty, and property, I, Andrew Johnson, President of the United States, and Commander-in-Chief of the Army and Navy of the United States, do hereby appoint William W. Holden"—

What for? To be

"provisional governor of the State of North Carolina, whose duty it shall be, at the earliest practicable period, to prescribe such rules and regulations as may be necessary and proper for convening a convention, composed of delegates to be chosen by that portion of the people of said State who are loyal to the United States, and no others, for the purpose of altering or amending the constitution thereof."

That was the proclamation sent forth to Mr. Holden in North Carolina. A proclamation like that was sent forth to Mr. Sharkey in Mississippi, and to some individual in each one the other States. That single clause which I have read to you, not only ignored the authority of Governor and Legislature and judge and municipal officer in these several States, but it absolutely ignored, set aside, trampled upon their organic laws and their constitutions. Some of these States, and most of them, had clauses in their constitutions prescribing the very mode in which their constitutions could be amended. The President of the United States ignores them all, disregards them all, and says to a man. "All the authority belonging to that State I put in your hands from this time forward; go on irrespective of your statutes and your constitutions; call together your people, prescribe the districts which may elect, prescribe the qualifications of those who may vote, and thus convene a body of men which shall make a new constitution for your State." It is indeed making an entirely new State.

Mr. President, in the history of the executive effort to reconstruct these States many very noticeable facts are found. I have been profoundly interested in looking over the journal of these executive efforts to make loyal States out of rebel communities. It was a difficult enterprise, you will see at once upon the face of the thing. That it should not have run entirely smooth I think would have been anticipated by anybody, especially commencing on that plan. I want to call your attention to some of these features. Most of these provisional governors entered upon the work assigned to them by issuing proclamations of their own, telling their respective subjects what was expected of them and how to do it. Governor Marvin, who was appointed provisional governor of Florida, and who, I believe, was one of the most intelligent of them all, issued a proclamation to his subjects; for you see they were all subjects of; his, not constituents of his. He derived no power, no authority, from them whatever. He represented the President. As these were the people put into his hands to govern and to control for the time being, he issued a proclamation. He prescribed the qualifications which were required to enable a man to vote. He required them to be loyal; that is to say, he required them to take an oath that they would be loyal; and he required that nobody should vote who had been a traitor unless he had been pardoned; but he says:

"Where the person offering to vote comes within the exceptions contained in the amnesty

proclamation"—

That is, where he is a \$20,000 man, I presume—

"and shall have taken the amnesty oath, and shall have made application to the President for a special pardon through the provisional governor, and shall have been recommended by him for such pardon, the inspectors or judges of the election may, in most instances"—

What?

"properly presume that such pardon has been granted, though, owing to the want of mail facilities, it may not have been received by the party at the time of the election."

In other words, if, on the morning of the election, a man who has not been pardoned shall take the amnesty oath, and get the governor's recommendation for a pardon to be sent to Washington, the inspector of the election may presume he has been pardoned, but has not received his pardon for the want of due mail facilities. That is the legal presumption established for such cases in the proclamation of the provisional governor of the State of Florida.

Governor Holden, who took one of these commissions, had some doubts about the right of some of his people to vote. What does he do? He does not look into the law or constitution of North Carolina to settle the question. If my friend, the Senator from Michigan, [Mr. Howard] was appealed to by one of his fellow-citizens to know whether he had a right to vote, I do not precisely know what he would do. I think he would go to the statutes of Michigan, if he did not recollect the law, and I think he would do anything or everything except just what Governor Holden did. What did he do? He wrote to the Secretary of State to know whether such a man could vote or not. The Secretary of State was inquired of as to whether a certain man should vote in the State of North Carolina. This was in execution of that plan which is so very respectful and religiously regardful of the rights of the States. Here is Governor Holden's letter:

STATE OF NORTH CAROLINA.

EXECUTIVE DEPARTMENT,

RALEIGH, NORTH CAROLINA, June 19, 1865.

Sir: I shall soon have to give directions to county boards, making provisions for the enrollment of voters.

I respectfully request to be instructed whether paroled soldiers will be allowed to vote for delegates to the State convention upon taking the oath of amnesty, or will each soldier have to procure the President's pardon?

I am, most respectfully, your obedient servant,

W. W. HOLDEN.

Hon. WILLIAM H. SEWARD, Secretary of State.

Mr. SUMNER. Was it not addressed to the Secretary of State as having charge of our foreign relations?

Mr. HOWE. Mr. Holden must have thought he was dealing with a State not in the Union, but out of the Union, and that he must consult with the Department of Foreign Relations to know whether he had a right to vote or not. That did not occur to me. It is very plausible, very probable. I accept that explanation for the purposes of this argument.

But, Mr. President, the worst difficulty they seem to have had in getting along with this plan was in South Carolina. South Carolina proved a regular hard nut to be cracked. Several of these governors, when they received their commissions, not knowing exactly what to do with them, especially not knowing who was to pay them for discharging the duties imposed upon them, at once addressed letters to the Secretary of State to know who was going to pay their salaries. They got along with that very well. They were informed that their salaries would be paid upon bills being presented to the State Department, the Department of Foreign Relations. In South Carolina, Mr. B. F. Perry was appointed to be governor of those dominions. Perry seems to have been a little technical, crotchety, I should think. He was here in Washington, I take it, at the time he received his commission. The very first thing he does is to write a letter to the Department of Foreign Relations, dated Willard's Hotel, July 21, 1865:

"DEAR SIR: I desire to know what provision has been made for defraying the expenses"

Not of the provisional governor, but

"of the provisional government in South Carolina; likewise, whether I am allowed a private secretary, and his compensation; also, as to stationery, blanks," &c.

This is from the Governor of the sovereign State of South Carolina.

"In your communication to me inclosing my commission, you state that I am to receive a salary of

\$3,000, and may draw for the same on your Department monthly or quarterly. As we have no money in South Carolina at this time, it would be a very great accommodation to me to allow me to draw a quarter's salary at this time. If this can be done and you will send me a draft for the same, you will very much oblige me."

Then he goes on to ask for further and fuller instructions as to what he shall do. That was rather a poser. The Department of Foreign Relations seemed to have no difficulty in disposing of the mere matter of the governor's salary. They could get along by charging that over to the incidental fund of the War Department; but this undertaking to pay the expenses of that provisional government, and the private secretary, and all these assistants, to say nothing about the stationery of the executive department, was rather a poser; but the Secretary met it. On the very next day he replied, as follows:

*DEPARTMENT OF STATE,
WASHINGTON, July 22, 1865.*

Sir: I have received your letter of yesterday, and trust that the favorable anticipations which it expresses in regard to there organization of the State of South Carolina will be realized.

The inevitable and indispensable charges attending the measure, including your salary as provisional governor, will be paid by the War Department as an expense incident to the suppression of the rebellion. You will, consequently, frame and submit to that Department an estimate of those expenses, in order that the necessary arrangements for defraying them may be made.

I am, sir, your very obedient servant,

WILLIAM H. SEWARD.

His Excellency B. F. PERRY, Provisional Governor of South Carolina, now in Washington.

The Secretary of Foreign Affairs had to play a little shy of that demand, but he met it honorably and honestly. Mr. Perry evidently seemed to think that as this cotillion was arranged by the United States the United States should pay for the music. The Secretary of State seems to have concurred in that view, and although he was a little afraid it might break him, he entered into the arrangement, but he says to the sovereign State of South Carolina, "It is only the inevitable and unavoidable expenses;" that is to say, you must economize all you can, for we do not know about this thing.

I should like to read other incidents transpiring in the progress of these efforts, but I have detained the Senate too long upon that subject. Let me conclude this part of the history with saying that after a fashion in almost all these communities, all, I believe, with the exception of Texas, the President, with the assistance of the Secretary of State, did succeed in setting up organizations which they proceeded to name State governments. Let them hereafter be known as State governments.

But, sir, were these governments clothed with the prerogative of States? Did the President so regard them? Did the Secretary of State regard them as States clothed with the power and with the attributes of States and vested with the authority of States? The Secretary tells us in a letter which he addressed to Governor Marvin of Florida on the 12th of September, 1865, how he regarded them. He says:

"Sir, your Excellency's letter"—

That was really very respectful in the Secretary of State. That looks as if he recognized them as sovereign States. He addressed Governor Marvin as "your Excellency"—

"Your Excellency's letter of the 29th ultimo"—

That was the letter in which he inclosed the proclamation from which I read an extract a short time ago—

"with the accompanying proclamation has been received and submitted to the President. The steps to which it refers, toward reorganizing the government of Florida, seem to be in the main judicious, and good results from them may be hoped for. The presumption to which the proclamation refers, however, in favor of insurgents who may wish to vote, and who may have applied for but not received their pardons, is not entirely approved."

Not entirely approved — almost approved, not quite.

"All applications for pardons will be duly considered, and will be disposed of as soon as may be practicable. It trust, however, be distinctly understood that the restoration to which your proclamation refers will be subject to the decision of"—

The President? No—

"of Congress."

That was the notice personally served upon the Governor of Florida by the Secretary of State, dispatched on the 12th of September, 1865.

Mr. President, as further evidence of the light in which the President and Secretary of State regarded these reconstructed governments down there, let me call your attention to a telegram sent from the Department of State on the 11th of November, 1865. That is after the Secretary of State had been notified that Governor Holden, in North Carolina, had gone on, had assembled a convention, and had the constitution amended, the amendments adopted by the people, and the government elected under it, the whole machinery set up, the fires under the boilers, all ready to start the engine. Holden thought the engine was going to start, and that he had to start, too, that is to say, stop playing provisional governor. The Secretary of State seems to have been afraid that Holden would start and let the new government run on; he telegraphed to him on the 11th of November 1865, as follows:

"The President directs me to say that he expects you to continue in the exercise of the functions of provisional governor of North Carolina until you shall have been relieved by directions from him."

Thus you see in that community which you insist upon calling a State because it was once made a State, the President not only intervened at the close of the rebellion and wiped out of existence every one of the local tribunals, put the whole power in the hands of a single man, authorized and ordered him to go on and reorganize a new government, but after that new government had been organized he still told the one-man power to stay there in spite of these new tribunals which had been chosen by the people to represent them. "Stay there because the President tells you to stay there" or "stay there until relieved by the President." That dispatch was sent on the 11th of November. It was not until the 4th of December that the Secretary of State wrote to Governor Holden:

"The time has arrived when, in the judgment of the President of the United States, the care and conduct of the proper affairs of the State of North Carolina may be remitted to the constitutional authorities chosen by the people thereof without danger to the peace and safety of the United States."

Almost a month after he is notified of the organization of this government the President holds that whole power belonging to a State in the hands of a single individual, notwithstanding the people had done everything which they had been told to do to regain possession of that power.

So in Mississippi, on the 8th of September the Secretary of State addressed to Governor Sharkey this letter:

"Sir, your letter of the 28th ultimo, accompanied by a copy of the amended constitution of Mississippi, as adopted by the recent convention of that State, has been received and will engage the early attention of the President."

On the 19th of October Governor Sharkey informed the Secretary of State as follows:

JACKSON, Mississippi, October 19, 1865.

SIR: I have the honor to inform you that Benjamin G. Humphreys, who was elected to the office of Governor of the State at the late election, has been duly installed into office, and that all the other State officers have been duly qualified. The civil constitutional government of the State is now complete, and the Legislature is in session.

Very respectfully, your obedient servant,

W. L. SHARKEY,

Late Provisional Governor.

Hon. WILLIAM H. SEWARD, Secretary of State.

On the 3d of November the Secretary of State sent a telegram to Governor Sharkey, addressed to "his Excellency William L. Sharkey, provisional governor of the State of Mississippi, Jackson." This is in reply to Sharkey's communication in which he calls himself "late provisional governor," and in which he tells him that the Governor and all the officers elected by the people had been duly installed, qualified, and taken possession of their offices. In reply to that the Secretary says:

"Your letter of the 19th ultimo has been received. It is the expectation of the President that you will continue your functions as provisional governor until further notice from this Department."

There was his new machine actually set running by a blunder of this provisional governor. He did not know but that when set up it was well enough to let it run. He informs the Secretary of State so. A few weeks after that, the Secretary tells him that he must continue to play provisional governor of Mississippi until he is otherwise ordered by the Department.

I am not objecting to these things; they are all right enough; but, Mr. President, [Mr. Hendricks in the chair,]

when such antics are attempted to be played in the State of Wisconsin and the State of Indiana, you and I will have something to say about it, I take it. When such antics as these are attempted to be played in States which are States, States which are sanctioned by the Constitution, I take it that we shall have something to say about it. I comment upon these things because I find them in that policy and in that plan which is said to be so peculiarly respectful, so tenderly regardful of the rights of States, and because this policy is championed by those who assert that when you have once committed these prerogatives to a community they remain there forever; you cannot interfere with them under any circumstances whatever.

But, sir, the time did come, in the progress of events, when the notice went forth from the State Department to these provisional governors, saying to them, "Retire; let the new governments take possession." Were they made States thereby, clothed with the full powers of States, permitted to exercise the powers belonging to States under the Constitution? Let us see. The people of one of the counties of the State of Alabama, claiming the right to choose a judge of probate, a right secured to them by the constitution and laws of the sovereign State of Alabama, seem to have elected one Raphael W. Semmes to be judge of probate. Raphael W. Semmes is a historical character. I understand he is a very able man, and I dare say would make a very good judge of probate. As suggested by my friend from Ohio, [Mr. Wade,] if he has never had any actual practice in administering estates he has undoubtedly been the occasion of making a great many estates to be administered upon. The people there thought, it seems, that he was the best man they had for judge of probate, and they elected him. The news came up here to Washington that he had been elected. An order was issued. From whom? Not from any of the tribunals of the State of Alabama, but from Brevet Major General Charles R. Woods, who seems to have been in command of the department of Alabama:

HEADQUARTERS DEPARTMENT ALABAMA, May 17, 1846.

In compliance with instructions from the President of the United States, it is hereby directed that Raphael Semmes be not permitted to hold or exercise the functions of judge of the probate court of Mobile county, or any other civil or political office of trust while he remains unpardoned by the President.

By order of Brevet Major General Charles R. Woods:

*A. RAMSEY MINNINGER,
Assistant Adjutant General.*

Judge Bond will perform the duties of the office in the mean time.

That is a pretty good note for a major general. Recollect it is by command of the President of the United States, who is taking such excellent care of the sovereign rights of States. He tells the people of this county in Alabama, "You cannot elect Mr. Semmes for your judge of probate," and having done so, he says further, Mr. Semmes you stand to one side; Mr. Bond, you be judge of probate." Who is going to administer upon estates in that county hereafter, I should like to know? If the right of Judge Bond to administer is called in question, what is the evidence of his right? The constitution and the laws of the State of Alabama require that the judge of probate shall be elected by the people. They elected Mr. Semmes. General Woods says to him, "You must not play judge of probate; let Judge Bond do this." Judge Bond has got the commission of General Woods as his authority for administering upon the estates of those who may happen to die in that particular county.

Mr. HOWARD. By whose authority was that done?

Mr. HOWE. By the authority of the President of the United States. Sir, the best advice I can give to the people of that county is, not to die until a new judge of probate is elected. I am afraid there will be trouble in the settlement of their estates.

[At this point, the honorable Senator yielded to a motion that the Senate proceed to the consideration of executive business.]

WEDNESDAY, June 6, 1866.

The same subject being again under consideration—

Mr. HOWE said: Mr. President, when the Senate adjourned last evening I was endeavoring to show that not only did the President of the United States recognize and exercise the power of the General Government to establish provisional governments for the seceded States, but that he recognized so absolute a control over them on the part of the Government of the United States that he did not recognize even the new governments organized through the intervention of his own governors as clothed with the attributes and prerogatives of States. I referred

to the fact that a judge of probate in a county of Alabama had been dismissed by the order of the President from his office, and that another man, not elected by the people, had been selected to discharge the duties of that office. There is another instance. In New Orleans, in March last, the people elected a man by the name of Monroe to be mayor of that city. General Canby, it seems, being in command there, thought he was not a fit man to discharge the duties of mayor of that city, and we learn by a dispatch dated New Orleans, March 19, this fact:

"All the newly elected city officials were duly installed today with the exception of Mayor Monroe and Mr. Nixon, an alderman, whose functions have been temporarily suspended as coming within the exceptions to pardon made by President Johnson's proclamation. M. G. Roseau has been installed mayor pro tempore by order of General Canby."

Thus, in Alabama, judges elected by the people are set aside; in New Orleans, mayors and aldermen of cities elected by the people are set aside; and these men were elected under the authority of these new constitutions and the laws enacted in accordance with these new constitutions!

Sir, let me be distinctly understood. I am not complaining of the President of the United States or of General Canby for setting aside Judge Semmes, or Mayor Monroe, or Alderman Nixon. These are not isolated cases, but a great many others like unto them have happened in other States of that portion of the Union. I am not complaining of these acts. I agree entirely with the President, that Judge Semmes is not fit to discharge the duties of judge of probate. I have no doubt that Mr. Monroe is entirely unfit to act as mayor of the city of New Orleans. What I wish to call attention to is this: that Judge Semmes is no more unfit for judge of probate than the people of that county are to elect a judge of probate. When the President of the United States finds that Judge Semmes is not fit for judge of probate, he gives the most conclusive testimony in the world that the people who elected Judge Semmes were not fit to make an election. There was no misunderstanding about who Judge Semmes was. They knew all about him. They elected him because he suited them. So of the election of Mr. Monroe. Mr. Monroe was satisfactory to the people of the city of New Orleans, and therefore they chose him. In the judgment of the President, he was unfit for mayor: he had not been pardoned. The people of New Orleans cared nothing for that fact. They would just as lief have a man to serve them who had not been pardoned as one who had; and, as far as that goes, I suspect I should agree very much with the people of New Orleans. I do not think there is any great distinction to be made between those who are not pardoned and those who have been.

I mention these facts for the other purpose of showing that the President does not regard these communities as States like the State of New York or like the State of Ohio. He would not attempt to do any of these things in either of those States or in any State which had held fast to the Union and never had dissolved its relations with the Union. And I cite them for the purpose of asking the question, how it happens that what the President could do without an act of Congress, Congress could not do by an act of its own? It was argued, I recollect, by the Senator from Pennsylvania [Mr. Cowan] some time since that the President had a peculiar gift, or a peculiar right, for doing these things because he was an executive officer. I understood the Senator to say that the President of the United States went into South Carolina and Georgia and deposed Governors and Legislatures, and had the same right to do it that a sheriff would have had, or a marshal. Perhaps he had as much right as a sheriff or a marshal. The Senator's argument put it upon the ground that these men were criminals discharging the functions of these offices down there, and that the President instead of arresting them as criminals just deposed them.

I think the Senator from Pennsylvania or any other lawyer can understand the vast difference between the two acts. But I think the Senator from Pennsylvania will agree that neither of these two acts could be done by the President, or be done by a sheriff or a marshal, simply because he chose to do it. The mere fact that a man is a criminal, or is deemed to be a criminal, gives no authority to a sheriff or a marshal to interfere with him. Before the sheriff or the marshal is allowed to put his hand upon him and restrain him of his liberty, he must have the authority of the State or of the United States for doing it; he must have a writ, a precept, a written command in his possession issued by the supreme authority, directing him to do that very thing. It must be addressed to him, and must command him to do that very act, otherwise he cannot make the arrest. No marshal of the United States had any right to interfere with the Governor of South Carolina or with any member of her Legislature, simply because they had been traitors; but when a court of the United States, leaving jurisdiction of that offense, saw fit to issue a warrant, addressed to the marshal, directing him to make that arrest, then he could do it; not until then. The President could not do it at all. The President could not do it, if he had a trunk full of warrants. He cannot serve a writ. In order to serve writs he must be authorized by law to serve them. His duties are very different from those of a marshal. And when the writ is issued it must be served by the officer to whom it is issued and by nobody else.

But there is this great difference between what the President did and what the Senator from Pennsylvania supposes he did. What the Senator from Pennsylvania supposes he did was simply to restrain the Governors of

these States and the other officers of their liberty. That was not all. That was but a small part. He restrained the whole people of the "State," as they call it, of their liberty. They had under their laws, and it is contended here they had under the Constitution of the United States, the right to elect those men and to have their services. It was interfering less with the liberty of the individuals who were removed from office than the liberty of the people themselves. They chose to have those officers to serve them. The President said they should not have them.

Thus it was that, without writ, without warrant, as I think, without authority of law, certainly without process in his hands, by a single clause of a proclamation, he not only arrested, that is to say took possession of, took into custody, according to the theory of the Senator from Pennsylvania, every officer in each one of eleven States, but he actually took into custody the whole people of the State. That was a pretty sweeping arrest, not often equaled!

No, Mr. President, the only authority in the world for doing these things is the fact that the people of those States had themselves destroyed the only kind of government which the Constitution of the United States will tolerate. What was in the place of those governments was an illegal, unconstitutional, criminal existence, and the President treated that criminal organization just as a sheriff or anybody else would treat any other person or any other party engaged upon a criminal enterprise. The law commands you not to interfere with the liberty of a citizen except you have due process of law for doing it. Still, if you are going along Pennsylvania avenue and see a store about to be entered by a burglar, in spite of the Constitution, in spite of the laws, you would not hesitate to take him by the collar, if you felt strong enough, and stop the commission of that crime. And so the President found a band of criminals before him. He brushed them out of the way. But if they were lawful tribunals of legal States, then instead of doing a good deed, as I insist he did, he committed a great wrong.

But it has sometimes been said that he could be justified in doing these things because he was Commander-in-Chief of the Army and the Navy, and that he did them in the exercise of what are called the war powers of the Government. Without stopping to consider whether more of the war powers of the Government is vested in the President than in the Congress of the United States, I want to say that the proof seems conclusive that he did not assume to act in virtue of any such power whatever. War had ended when he deposed these Governors and Legislatures. War had ended when the new Governors and new Legislatures were elected. War had ended when Judge Semmes was deposed; when Mayor Monroe was deposed. But if I am mistaken on that point, if war had not ended then, it did end subsequently. I can prove that. I can bring proof that the President and his friends will not contradict, that it ended in all the States but Texas. I find it certified in a proclamation, "Done at the city of Washington the 2d day of April, in the year of our Lord, 1866, and of the independence of the United States of America the ninetieth" — signed Andrew Johnson, and attested by William H. Seward, Secretary of State. That proclamation is introduced to the world by a series of whereases, occupying a whole column and more of this daily paper — the twelve tribes of whereases, starting, I believe, away back in 1861, five years of whereases. One would think a pretty important proclamation ought to succeed such a formidable preamble as that. Let us read the proclamation

"Now, therefore"

Because of all these things which have occupied a column and a half, or less

"Now, therefore, I, Andrew Johnson, President of the United States, do hereby proclaim and declare that the insurrection which heretofore existed in the States of Georgia, South Carolina, Virginia, North Carolina, Tennessee, Alabama, Louisiana, Arkansas, Mississippi, and Florida is at an end, and is henceforth to be so regarded."

The insurrection is at an end, says the President; let the world henceforth so regard it. Well, what does that do? The insurrection being at an end, how is the face of things changed by that? Now will these States have the services of their officers? Now will they be remitted to the rights and prerogatives of States? Now will their elections be respected, their laws have full force, run, and be glorified? Something important everybody thought was going to happen after such a proclamation as that was issued. It seems that an agent of the Freedmen's Bureau down in Georgia thought some great change must have been wrought by this proclamation in the face of political affairs, and he inquired what it meant. His inquiry was referred to the Department of War. He received this answer to it on the 9th of April:

WAR DEPARTMENT,

WASHINGTON, April 9, 1866.

Sir: The assistant commissioner of the Bureau of Refugees, Freedmen, &c., for the State of Georgia having inquired whether the President's proclamation removes martial law, and stated that the department commander does not feel authorized to arrest parties who have committed outrages on freed

people or Union refugees, the Secretary of War, with the approval of the President, directs me to inform you that the President's proclamation does not remove martial law, or operate in any way upon the Freedmen's Bureau in the exercise of its legitimate jurisdiction. It is not expedient, however, to resort to military tribunals in any case where justice can be attained, through the medium of civil authority.

*E. D. TOWNSEND,
Assistant Adjutant General.*

*Brevet Major General J. M. BRANNAN,
Augusta, Georgia.*

The insurrection is suppressed; peace has come; martial law, however, does not end in those communities; nothing is changed by it; their rights are just what they were before, and the authority of the Government is just as absolute, as it had been before; nay, this Judge Semmes was deposed after this proclamation issued, after the insurrection was suppressed, and was so declared by the President.

Would the President of the United States undertake to say that martial law existed or could exist in any State of the United States now, subsequent to his proclamation? The Constitution declares that "the privilege of the writ of *habeas corpus* shall not be suspended unless when in cases of rebellion or invasion the public safety may require it." Would the President venture to say he had suspended the writ of *habeas corpus* when he had declared there was no longer any rebellion? I think not. He continues martial law there, because it is the only law that is reliable. He has nothing else, he has no act of Congress, and he cannot trust to the laws of those communities. He is perfectly right, in my judgment, in not trusting to those laws. But I think it would be a great deal better for him, a great deal better for those communities, a great deal better for the country if he would recommend to Congress here the passage of such laws as are suited to their condition.

Sir, let me call your attention to one little fact (I will not read the papers) illustrative of the great embarrassment attending this mode of governing great communities. The Legislature of the new State of Florida, I learn, enacted a law establishing a county criminal court, the principal business of which I judge to be to discipline the colored population of that State — the freed people. That statute declares a great many different offenses, prescribes penalties for them; whipping is one of the penalties; the pillory is another of the penalties. The commissioner of freedmen's affairs thought that whippings and pillories were not suitable penalties to be imposed on human beings. Accordingly he declared that such punishments should not be imposed on the freedmen who were subject to his jurisdiction. He appealed to the officer in command of the department of Florida, General Foster, I think. General Foster issued an order from his headquarters directing that whenever a county court sentenced a negro to be whipped or to stand in the pillory he should be turned over to his headquarters, not be whipped, not to stand in the pillory, but when turned over to his headquarters he should be set to work at the ball and chain so long a time for each blow to be inflicted, so long a time for each hour he was to stand in the pillory. That order was received by the Governor, and he issued, I believe, an order in conformity to that requiring all persons sentenced to stand in the pillory or to be whipped to be turned over to his headquarters.

Now, Mr. President, just look for a moment at the condition of a man sentenced to be whipped or to stand in the pillory in Florida. The judgment is not executed; but neither is it reversed. The defendant is sent to the headquarters of General Foster. Another punishment which is provided for in no judgment in the world is inflicted upon him. The judgment in the county court stands unreversed. After he has got through with his service at the ball and chain, and has left General Foster's headquarters, there is the judgment of the county criminal court to be executed. The only aid, as I see, that the negro is likely to get from this intervention of the officer in command is that the punishment of whipping or standing in the pillory is simply postponed, and in the end he receives a double punishment instead of a single punishment.

If a provisional government was established for Florida by act of Congress, none of these things could happen. When Florida enacted a law which outraged the sense of public justice, Congress would do what it does with every other Territory enacting such a law; the law would be set aside, and then there would be no judgments under it. But here, under this mode of administering government, the law is allowed to stand; the tribunals of justice act upon it, try cases, pronounce judgment, and the judgment is not allowed to be enforced, at least until another penalty deemed satisfactory to the officer in command is inflicted. Sir, I do sincerely think I am abundantly justified in making the proposition with which I set out, that if the power which I claimed in January last for Congress to provide provisional governments for those communities is not furnished by the Constitution,

the President is more defenseless than any man who has ever undertaken to administer government for the United States. If that authority does not exist, how these acts are to be defended it is impossible for me to conceive.

But, Mr. President, it is urged that however the plan or the policy of the President may accord with the Constitution, it does accord exactly with the policy of his predecessor in office. That is a point which my colleague has urged repeatedly with great force and with great earnestness. I desire to say now that there is no more similitude between the policy of President Johnson and the policy of President Lincoln than there is between a blister of Spanish flies and a poultice of cabbage leaves. [Laughter.] What was the policy of President Lincoln, which this plan is said to resemble? Recollect, sir, when Mr. Lincoln issued his proclamation of the 8th of December, 1863, we were at war, and this proclamation of his was issued, not in the interest of our enemies in that war, but to injure our enemies and in the interest of our friends. Therefore it was that he proclaimed this:

"And I do further proclaim, declare and make known, that whenever, in any of the States of Arkansas, Texas, Louisiana, Mississippi, Tennessee, Alabama, Georgia, Florida, South Carolina, and North Carolina, a number of persons, not less than one tenth in number of the votes cast in such State at the presidential election of the year of our Lord 1860, each having taken the oath aforesaid, and not having since violated it, and being a qualified voter by the election law of the State existing immediately before the so-called act of secession, and excluding all others, shall reestablish a State government which shall be republican, and in no wise contravening said oath such shall be recognized as the true government of the State, and the State shall receive thereunder the benefits of the constitutional provision which declares that the United States shall guaranty to every State in this Union a republican form of government, and shall protect each of them against invasion: and on application of the Legislature, or the Executive, (when the Legislature cannot be convened,) against domestic violence.' "

That is what he said. There was in that proclamation the exercise of the same identical power which President Johnson exercised in 1865, and the exercise which I insisted ought to be exercised in January last by Congress; that is to say, the power to take the prerogatives of a State from the whole people of a State, and to do something else with them. President Lincoln proposed to take them from the whole body of the people and give them to a minority of the people, not less than one tenth. President Johnson, in 1865, took them from the whole body of the people, and gave them to a single individual. I proposed to take them from the whole body of the people in the State and give them to the people of the United States. That is the difference between the three propositions. Look at the practical operation, however, of the two plans. President Lincoln's proclamation says to these people down there, "So many of you as will, now while the war is raging, turn your backs on the rebellion, become our friends, take an oath to stand by us, and to fight our enemies, we will take by the hand; we will organize you into a State; we will build up the boundary line of a State, as a wall between you and the rebels; we will exclude them from all power, and vest all power in you." That was President Lincoln's plan. He proposed to wrest the prerogatives of the State from the majority and to bestow them as a reward upon the minority who should then, when the rebellion was at the height of its power, desert it, defy it, and take an oath to resist it. President Johnson's plan was promulgated only after the power of the rebellion was utterly broken. When majorities and minorities were alike ready to swear fealty to the United States because they could not longer resist its power, then the President tendered pardon and the prerogatives of the State to that very majority which had resisted while resistance was possible, and to whom the law secured nothing but the extreme penalty due to treason.

President Lincoln held up the prerogatives of the State as a reward to those who should desert the rebellion and help subdue it, while President Johnson, after the rebellion is subdued by the boundless expenditure of blood and treasure, flings those same priceless prerogatives to his prisoners of war.

But there was another difference between the

policy of President Lincoln and the policy of President Johnson. President Lincoln says:

"This proclamation is intended to present the people of the States wherein the national authority has been suspended and loyal State governments have been subverted a mode in and by which the national authority and loyal State governments may be reestablished within said States, or in any of them; and while the mode presented is the best the Executive can suggest with his present impressions, it must not be understood that no other possible mode would be acceptable."

President Lincoln offers the best plan he can think of, but advertises that he is ready to accept a better one if others can devise it. President Johnson offers a plan immeasurably worse, and allows men to whose unbought efforts he is indebted for the power he wields to be proscribed for no offense but believing that a better plan can be devised.

Mr. President, here seems to be the issue: we invite the people of the United States to incorporate these just and necessary amendments into their Constitution; and we propose to sequester the claim to representation in Congress until these amendments be agreed to. The opponents of these amendments invite the people of the States now represented to send Representatives here who will open these doors to the representatives of these rebellious communities at once, and whether the pending amendments be agreed to or not. That is the issue. I do not know what the decision is to be. I hear it said in the newspapers and elsewhere that a Congress is coming here that will open these doors. Perhaps so, I see most elaborate efforts being made to bring such a Congress here. With what success it is to be attended I do not know. That remains to be seen. I see a great many individuals and a great many representatives sent here by the Union party to uphold the Union cause now aiding to their utmost in all that is thought to be required, to secure such a Congress.

Mr. WILSON. There are not a great many of them.

Mr. HOWE. No, I do not mean to say there are a great many of these representatives. There are a few of them aiding in that work. I am told that the design is to pack the Congress of the United States, to select men and to secure the election of men devoted to the single purpose of getting representatives in here from these lately rebellious States.

Mr. President, there was an attempt about two hundred years ago to pack a Parliament in England, and it would be well enough perhaps for those engaged in this enterprise to recur to the history of that. It is said, indeed, that those who are engaged in this enterprise have the President with them and have the patronage of the Government on their side; that that is all-potential; that the country and the public conscience cannot stand up against it. They may be right who put that estimate upon the influence of patronage. But recollect we do not know that this patronage is to be in the hands of the present Executive for more than about two years. When, two hundred years ago, they undertook to pack a Parliament in England, this patronage was all in the hands of a king for life and his heirs after him.

Mr. COWAN. What Parliament was that?

Mr. HOWE. The Parliament of James II. The question there was whether the Catholics should be admitted to a share in the Government. The question here is, whether the rebels shall be admitted to a share in the Government. I do not know whether the hostility of the nation to the rebels is as strong as the hostility of the English nation was to the Catholics or not. I am inclined to think it is. That was the question in that case. I have stated the question in this. Macaulay says:

"The sanction of a Parliament was necessary to his system."

And I judge the President thinks that the sanction of a Congress would be convenient to his.

*"The sanction of a free and lawful Parliament it was evidently impossible to obtain; but it might not be altogether impossible to bring together by corruption, by intimidation, by violent exertions of prerogative by fraudulent distortions of law, an assembly which might call itself a Parliament, and might be willing to register any edict of the sovereign. Returning-officers must be appointed who would avail themselves of the slightest pretense to declare the King's friends duly elected. Every placeman, from the highest to the lowest, must be made to understand that if he wished to retain his office he must, at this conjuncture, support the throne by his vote and interest. The High Commission, meanwhile, would keep its eye on the clergy. The boroughs, which had just been remodeled to serve one turn, might be remodeled again to serve another. By such means the King hoped to obtain a majority in the House of Commons. The upper House would then be at his mercy. He had undoubtedly by law the power of creating peers without limit, and this power he was fully determined to use." * * **

"But there was no extremity to which he was not prepared to go in case of necessity. When in a large company an opinion was expressed that the peers would prove intractable"—

As it is sometimes suggested the Senate may—

"'Oh, silly,' cried Sunderland, turning to Churchill, 'your troop of guards shall be called up to the House of Lords.'"

And I think I have heard such intimations thrown out about the treatment to be bestowed upon the Senate.

"Having determined to pack a Parliament, James set himself energetically and methodically to the work. A proclamation appeared in the Gazette, announcing"—

A change of the postmasters, collectors of revenue, assessors, and district attorneys, substantially.

"A proclamation appeared in the Gazette, announcing that the King had determined to revise the commissions of peace and of lieutenancy, and to retrain in public employment only such gentlemen as should be disposed to support his policy."

If they wanted to eat the King's bread and butter they must support the King's policy.

"A committee of seven Privy Councilors sate at Whitehall for the purpose of regulating — such was the phrase — the municipal corporations."

I do not know exactly how many members compose the Johnson club, which is, I believe, nothing essentially different from a committee of Privy Councilors.

"In this committee Jeffreys alone represented the Protestant interest. Powis alone represented the moderate Roman Catholics. All the other members belonged to the Jesuitical faction. Among them was Petre, who had just been sworn of the council. Till he took his seat at the board, his elevation had been kept a profound secret from everybody but Sunderland," &c.

Macaulay goes on at length to describe the efforts which were made to pack the Parliament; but after all they did not succeed. It seems wonderful that they did not. The King had absolutely unlimited control of all patronage, all appointments. Parliament did not dispute that with him. Congress does not yet agree that that power is in the hands of the President. But whatever power the King had he had for life. It is not certain that the President has the power vested in him today for life. Mr. President, how were these efforts received by the people of England? The historian says that Aubrey de Vere, Earl of Oxford, the noblest subject of England, when called upon to acquiesce in the policy of the King, answered :

"Sir, I will stand by your Majesty against all enemies to the last drop of my blood. But this is matter of conscience, and I cannot comply."

He was at once removed from his lieutenancy. A similar demand was made upon the Earl of Shrewsbury, and a similar reply given, and similar treatment was administered; upon the Earl of Essex with like results, and upon a great number of the most distinguished nobility of England; and one after another they went their way, as our postmasters, collectors, and assessors are going now in these days. Mr. President, history has taken note and has preserved down to this day the names, the fames, and cherishes yet the memory of those men who would rather be right than to be lieutenants of counties: and history for a great many years to come will cherish the name and the memory of those men who in these days dare to be right rather than be postmasters or collectors.

Among the expedients resorted to for the purpose of securing the election of the right sort of representatives was this:

"The catechism by which the lords lieutenant had been directed to test the sentiments of the country gentlemen consisted of three questions. Every magistrate and deputy lieutenant was to be asked, first, whether, if he should be chosen to serve in Parliament, he would vote for a bill framed on the principles of the Declaration of Indulgence; secondly, whether, as an elector, he would support candidates who would engage to vote for such a bill; and thirdly, whether, in his private capacity, he would aid the King's benevolent designs by living in friendship with people of all religious persuasions."

A pretty close catechism there.

Mr. COWAN. There is not much objection to that these days — toleration and indulgence.

Mr. HOWE. No, there does not seem to be. I believe the catechism has been greatly improved since that period.

"As soon as the questions got abroad, a form of answer, drawn up with admirable skill, was circulated all over the kingdom, and was generally adopted. It was to the following effect: 'As a member of the House of Commons, should I have the honor of a seat there. I shall think it my duty carefully to weigh such reasons as may be adduced in debate for and against a bill of indulgence, and then to vote according to my conscientious conviction. As an elector, I shall give my support to candidates whose notions of the duty of a representative agree with my own. As a private man, it is my wish to live in peace and charity with everybody.' "

A very good form of an answer. Whether it was referred to to [sic] any extent by those distinguished Cabinet officers who were visited by a serenading party the other night, and catechized in much the same way, and whether any of their responses were framed upon this precedent or not, I do not know.

This was in 1687. In 1688 the dismissed lieutenants of counties were restored to favor and to place. The committee of Privy Councilors were dismissed from Whitehall and disgraced, and the King himself was a fugitive from his realm, and no man has since occupied his throne who supported his policy.

Sir, history is useless if it do not guide and animate us in the discharge of our duties.

Mr. President, some things have been said, and some incidents have transpired, since this debate commenced in January last which I propose to notice, although they are not very material to the debate itself. We seem to have parted company here. Gentlemen who met in this Congress at the beginning of the session representing the same

party, upholding the same cause, commissioned to the same work, seem no longer to work together; and it has happened unfortunately, very unfortunately for the cause, very unfortunately for me, very unfortunately for the State that I have the honor in part to represent, that my colleague and myself seem to have parted company in this time.

My colleague some time since thought he had occasion to admonish me that the present President of the United States was not elected by the Whig party. I believe he was entirely correct in that statement. I really never had said or supposed that he was elected by the Whig party, and I did not quite understand at the time, and I do not quite understand now, what the necessity was for reminding me of so obvious a truth as that. It is true I did once belong to the Whig party. If, according to my colleagues's understanding of the gospel plan, that is the one unpardonable sin; if that is that blasphemy against the Holy Ghost which never can be forgiven in this world or in the world to come, I must submit to the consequences. I really was very honest and sincere, however, when I belonged to the Whig party. I really did think the Whig party tried to serve the country according to the best of its light and judgment; and I thought its light and its judgment were about as good as there were going. I think so still. I continued to serve it up to the time when in 1854 that party made its last struggle to defeat the repeal of the Missouri compromise; and when I found it, by reason of the defection of its southern members almost in a body, entirely unable to do anything to resist the tide of slavery aggressions, then, sir, I abandoned the Whig party and I united myself with the only party which seemed to me to promise some hope of effecting such a resistance. That is the extent of my guilt in that behalf.

My colleague took occasion to say in substance that he cared nothing for parties only as means to ends, but when we came down to principles we would find him there every time. If he had said that simply by way of paying tribute to his own steadfastness and stability I should not have felt called upon to dissent; but when he parades it rather as a reproach to those who no longer act with him than as a commendation of himself, it seems to me to demand some notice. I certainly do not stand here to deny that he is always true to principle; but I stand here to say that I do not think he is the only one who is always true to principle; and I must be allowed to add that, true as he is to principle, he is not understood to have been always true to the same principles. I have understood that in 1848 my colleague was a member of a convention which assembled at Buffalo, in the State of New York — a convention of what was called the Free Democratic party. That convention adopted what they called a platform. In that platform I find this resolution, the closing one:

"Resolved, That we inscribe on our banners, 'Free soil, free speech, free labor, and free men,' and under it we will fight on and fight ever, until a triumphant victory shall reward our exertions."

I do not know that my colleague was a member of that convention. I have been told so. If he was there and subscribed to this resolution, I have no doubt it truly reflected his convictions at that time, and that he was then true to that principle. But my colleague will hardly insist that he was true to the same principle in 1852, four years later, when in Racine he was opposing the candidate of the same party whose representative he was at Buffalo, and where he is said to have exerted himself to prove that slavery was of divine ordination, and to prove it from the Scriptures.

Mr. DOOLITTLE. It is false that I ever said that anywhere. It is true that in 1852 I supported General Pierce and my colleague supported General Scott; but they stood precisely on the same platform, as far as slavery was concerned.

Mr. HOWE. If it is false that my colleague ever made any such defense of slavery, I am very glad to hear it, and I am very glad that I have furnished him the opportunity to say so.

Mr. DOOLITTLE. In relation to that, I do not know where my colleague obtains any information bearing on this subject, but it is utterly false. For twenty-five years I have spoken on the subject publicly, in the State of New York and in all the States, and I have always maintained, in every form in which language could be used, that slavery was wrong. The idea that I ever defended it as a divine institution is utterly false.

Mr. HOWE. I am very glad to be corrected. I did not make myself responsible for the statement. I introduced it here in his hearing that he might contradict it if it were not true. I have heard it repeatedly said within the State of Wisconsin; I am surprised it should have come to my colleague's ears now for the first time. If I am mistaken about it, as I must think I am, I am glad to be so told. But if he did not advocate slavery then and there in his speech, he defended and upheld a party which did uphold slavery, and he did not adhere to the Free Democratic party which he did uphold in 1848.

Mr. DOOLITTLE. I have stated to my colleague that in 1852 I supported the election of General Pierce; and upon the slavery question his platform was precisely the same as the platform of the Whig party, whom my colleague supported in Wisconsin. So we stood on the same platform as to that. It was averred in the platform of

both parties that the slavery question was ended, and nothing should be said about it, pro or con, in Congress or out of Congress. But in 1854, when the Democratic party which elected Pierce, violated its pledges, renewed the slavery agitation, put in the knife, repealing the Missouri compromise, I from that moment denounced it as the dissolution of the Democratic party, and I gave what little power I had to help to overthrow it and trample it under my feet, because it was false to the pledges upon which it was elected; and in 1856, as a matter of course, we carried Wisconsin for Fremont, and against the extension of slavery into the Territories. My course, therefore, has been entirely consistent on the slavery question ever since 1817, when in the convention of the Democratic party of the State of New York, I myself introduced the corner-stone resolution upon which the Free-soil party of New York was organized, before the Buffalo convention. The Buffalo convention followed all that. It was the incident to it. It came in, and renominated Mr. Van Buren, who had already been nominated in the State of New York by the Free-soil Democracy, as they were called — the Barnburners, in the language of the day, by way of epithet. Those are the facts.

Mr. HOWE. I was not arraigning my colleague because he did not support General Scott in 1852. There was nothing in his previous history that I know of that seemed to make such action on his part called for. I thought it peculiar that he did not support the candidate of the same party whose candidates he supported in 1848. It was not because he did not support the Whig party, but that he did not stand by the Free Democratic party which in 1848 he had pledged himself to stand by forever. I simply say that although there might have been some similarity — and I do not concede that — between the attitude of the Democratic party and the Whig party in 1852, there was not that marked similitude between the attitude of the free Democratic party in 1848 and the Democratic party in 1852. I am not accusing him of any want of sincerity. I am bound to suppose that he was just as sincere in his devotion to the Democratic party in 1852 as in his devotion to the free Democratic party in 1848; but there, I do insist, is the proof that he was not adhering to the same principles in 1852 that he was in 1848.

But, Mr. President, it is true, as my colleague has said, that the Democratic party did not keep the pledges they made in 1852; that in spite of their promise made there to have no more agitation upon the question of slavery, they did introduce it again two years later, and they did repeal the Missouri compromise. My colleague says now that from that moment the Democratic party was dissolved. He will not undertake to say that his connection with the Democratic party was dissolved from that moment. I never heard of his dissolving his connection with the Democratic party until 1856, some two years after the Missouri compromise was repealed.

Mr. DOOLITTLE. Upon that subject, if my colleague will allow me to call it to his recollection, he will remember at once that I went on the bench as judge of the first judicial circuit of Wisconsin in 1853, and from 1853 to 1856 was judge of the first judicial circuit, and of course while upon the bench I did not take part in political affairs. After I had resigned from the bench then I felt at liberty to take part in them.

Mr. HOWE. It is true my colleague was upon the bench, but I believe he recollects perfectly well that his political affiliations were known all that time. I think I cannot be mistaken in my recollection that his first declaration in behalf of the Republican party, which was formed in 1854 if I remember aright, was after Congress adjourned in August, 1856, and then a letter from him was published which was the first that was known to the people of Wisconsin that he adhered to the platform and policy of the Republican party.

Mr. DOOLITTLE. It is true, as my colleague states, that the first public declaration which I made was upon the adjournment of Congress in 1856, where the point decided was that Congress would enforce the border-ruffian slave code in Kansas. The outrage was such that I could not, for one, endure it, and I publicly denounced it, and from that moment threw all the influence that I possessed against the party which had sustained that course and determined to enforce, as the laws of the Territory of Kansas, that border-ruffian code.

Mr. HOWE. I believe my colleague is entirely correct. He did not leave the Democratic party because of the repeal of the Missouri compromise, nor because of their enactment of the fugitive slave law. He adhered to it in spite of both those acts. But in 1856, two years after the Missouri compromise had been repealed, after Congress had adjourned, he then joined the Republican party; and then I believe he is entirely correct in saying that he gave as his reason, not that he objected to these measures, but that the principle of squatter sovereignty, or popular sovereignty, so called, had not been observed in Kansas.

Mr. DOOLITTLE. My colleague will do me the justice to understand certainly that while upon the bench I did not write any public letters or make any public speeches, but I did in conversation privately express my most declared opinions on that subject to all persons who conversed with me upon it. As far as I was at liberty to make declarations, being upon the bench, I did so; but I did not make any public declaration by letter or speech; that is all. I denounced the repeal of the Missouri compromise from the moment it was proposed.

Mr. HOWE. That was not all. The point is, that when he did make a public declaration of his adhesion to the

Republican party, it was not placed upon the ground that they had passed an obnoxious law in 1850 or another in 1854, but that the principle of popular sovereignty, which was pledged to the people of Kansas in 1854, had been violated, and they had not had the benefit of it. That was the ground upon which he, as I understand it, left the Democratic party in 1856 and joined the Republican party. But I am not disputing that he was just as sincere to his convictions in 1856 as he was in 1852 or in 1848, and I am not disputing that he is just as sincere in his convictions today, when he is leaving the Republican household, when he has left the Republican faith, as he was in 1856 when he embraced it.

Mr. DOOLITTLE. I will say to my colleague that I have not left it and do not expect to leave it. I do not mean either to be seduced from it or driven from it.

Mr. HOWL. Mr. President—

The PRESIDING OFFICER, (Mr. Pomeroy in the chair.) It becomes the duty of the Chair to remind Senators that the question under discussion is the amendment to the Constitution of the United States.

Mr. JOHNSON. I was about to ask what the question before the Senate was.

The PRESIDING OFFICER. The constitutional amendment has been under discussion for some time, and it is hoped that Senators will confine their remarks, as near as they are able to do so, to the question under discussion.

Mr. HOWE. Yes, sir; and I propose to confine my remarks as nearly to that question as I am able to do, but under these extraordinary circumstances I was not able to confine my remarks any nearer to that question than I have so far. Finding myself arraigned here as for a crime, that I had once affiliated with the Whig party, I thought it right to consider very briefly the party relations of my colleague heretofore. My colleague says now that he has not left the Republican party. I am very glad to hear that, if he really means to be understood by that that hereafter he will adhere to that party and to its principles and to its candidates and to its organization. But I understood him to say the other day that he had got on to a platform of his own and he did not propose to leave that, although the Union party did leave it, and he did not propose to leave that, although any other party got on to it.

Mr. DOOLITTLE. Mr. President—

The PRESIDING OFFICER. Does the Senator from Wisconsin yield to his colleague?

Mr. HOWE. I cannot refuse to yield for explanations.

Mr. DOOLITTLE. As this is a matter personal to myself; I hope my colleague will allow me to say a word. I say I have not left the Republican party which is that party which stands upon the platform on which we elected the President and Vice President of the United States in 1864. I stand on that platform and by its principles, and do not intend to leave them. I do not intend to be driven off from them, nor to follow anybody else off who may choose to go off from them on to a new platform; nor will I abandon the platform whoever else may come on to it. I mean to be governed by the principle which I avowed the other day, and which I expect to control my action. I will not interrupt my colleague in his speech further.

Mr. HOWE. Mr. President, it is very evident I did not misunderstand my colleague's position. He repeats almost the same words I put into his mouth as having been used the other day. The fact is that he has divided from the Union party. Whether the Union party has left the true platform, or he has, is the point in dispute between him and the party. I shall not stop here to discuss that question at length, nor to ask the Senate to settle it. They are apart, and another party is now standing on the platform that he occupies. He calls it his. He means nothing more than that he and the Democratic party occupy the same platform. Whether it is his or theirs in point of fact, I take it, will be settled when they get into convention together. The question of title will be settled then. If it shall be found to be his property I shall not dispute it with him. If they acquiesce in that title, it will be entirely satisfactory to me. I apprehend, however, that there will be some dispute about the right to it.

I have said that I did not mean to raise any question here upon the sincerity of my colleague's convictions; but I cannot help noting the fact that in 1848 when he was acting with the Free Democratic party, the Free Democratic party of New York was much the strongest portion of the Democratic party; it was, numerically, much stronger than the Democratic party of that State; and in 1852 when he left the Free Democratic party and acted with the Democratic party of Wisconsin, the Democratic party was the majority in that State, and the Free Democratic party only numbered about eight thousand of the popular vote. I have shown that my colleague did not leave the Democratic party and join the Republican party in 1854, but only in 1856, and then Wisconsin was no longer a Democratic State. Wisconsin elected a Republican Governor in 1855, and in about sixty days after my colleague published that letter, Wisconsin gave a majority of somewhere from fifteen to twenty thousand for the Republican candidates for President and Vice President. The Republican party was unmistakably in the majority; and in about four months from the time my colleague joined the Republican party, so grateful were they for his services, which

were very distinguished and very able, that they made him their representative in this Chamber. Since that time he has served the party and served the cause and served the country, and served it with distinguished ability. It is because of those recollections that that State especially and that I myself regret to see the attitude that he maintains today toward that party which welcomed him so cordially and has trusted him so long; for if he has not left it, he knows very well that he is proscribing it, turning from office, or helping to turn from office, as true and faithful men as were ever in that or any other party, and men who have done as much hard work in his support as any men have ever done. I do not know whether that party is in the majority in the State of Wisconsin or not; but the President certainly does not acquiesce in that view of public affairs which is most grateful and most acceptable to the Union party of Wisconsin. The President has this patronage in his power. It is said that he resigns it to those who maintain his policy. It is certain that my colleague has great influence in the disposition of it, at least in that State. Raising no sort of question upon the sincerity of his convictions, I must be allowed to say that he has been a most fortunate politician, always to happen to have just those convictions which bore the highest price in the market.

Mr. DOOLITTLE. Mr. President—

The PRESIDING OFFICER. Does the Senator from Wisconsin yield to his colleague?

Mr. HOWE. No, not now. I take it there is no explanation to be made on that point.

Mr. DOOLITTLE. The last remark of my colleague seems to me to call for an answer.

Mr. HOWE. I shall be through in a moment.

The PRESIDING OFFICER. The Senator from Wisconsin declines to yield the floor.

Mr. HOWE. Mr. President, one other remark has been made in the course of this debate to which I wish to allude. It was made by the Senator from Indiana [Mr. Hendricks] a day or two ago. He accuses the Union party of laboring here for party purposes and party ends. I think that remark most unjust. If we were actuated by the selfish purpose of building up the Union party and strengthening it, does he suppose, does any man of sense suppose, that we would take under our care that poor and helpless and hopeless race known as Union refugees and the colored freedmen in those States? If we were making combinations for party interests, and not for the good of the country, does the Senator from Indiana suppose we do not know enough to affiliate with the powerful and educated and influential class in those States rather than with this weak and helpless one? Do not we understand the value of such combinations just as well as he does, and would not they be as willing to combine with us as with them? What is there to secure that affiliation between them? Is it inevitable? What have they done? Is it not as desirable to those men who are seeking their way back into the Union to affiliate with those who have power as with those who have none? This Union party — I do not mean we who represent it here, but the Union party of the country — have whipped the rebellion; and the opposition to that Union party has done nothing but "the heavy standing round." They have not helped to uphold the rebellion any further than words would go, and they certainly have not helped to subdue the rebellion, even so far as that. Looking at it as a practical man, I think those gentlemen who are seeking to come back here would rather affiliate with those who represent the Union party, which can do something, than those who represent the Democratic party, and can do nothing as they have done nothing. And certainly if we were looking to our own party interests rather than to the interests of the country, it seems to me that that is the crowd we should most naturally affiliate with. I think it is unjust in the Senator from Indiana to taunt us, us of all the people in the world, with seeking party ends and party interests in the efforts that we have been making on this floor. For myself, I disclaim every such purpose as that. For myself, I avow here, as I have avowed everywhere, that everything I have asked to have done in the name of the nation, South or North, in reference to closing up this war, I have asked to have done not only because I believed the best interests of the poor and the helpless demanded it, but because I believed the best interests of the rich and the powerful demanded it there and here. There is but one measure which meets every want in the nation, and that is justice; justice from the Government to the people; justice between man and man. I believe we are trying to administer justice between man and man, and justice between the Government and the people.

SPEECH OF HON. GARRETT DAVIS,
of KENTUCKY,
IN THE UNITED STATES SENATE,
June 7, 1866.

The Senate having under consideration the joint resolution (H. R. No. 127) proposing an amendment to the Constitution of the United States—

Mr. DAVIS said:

Mr. PRESIDENT: We have been admonished by some of the leading members of the majority in the Senate, that Congress is now about entering upon the seventh month of its session, and that the public business was never so far behind at so late a period at any previous session of Congress as it now is. I think, that the honorable Senators who give this admonition and their friends, are alone responsible for the great backwardness of both Houses in the transaction of the public business. I admit that there is a very great state of backwardness in relation to the transaction of the legitimate, proper, and useful portion of the public business; but as to the business that is of an illegitimate and mischievous character, and that is calculated to produce results deleterious to the present and the future of the whole country, there has been a good deal, much too much, of progress made. This tardiness in the transaction of the important, useful, and appropriate business of the country has resulted from a fixed and determined purpose, manifested in various propositions. of the majority of Congress to elevate what are denominated the freedmen, to aggrandize them, to make an unparalleled provision in its extent and expensiveness for the maintenance of the young, the aged, the infirm, and the helpless, and the religious and intellectual education of them all; and to force, if possible, upon Congress and the country the dogma of negro suffrage.

Another cause of the consumption of time is the general disposition of the majority to tinker with the Constitution, their numerous propositions to amend it, and the discussion of them in both Houses. And still another fruitful cause of much waste of time has been the war that is prevailing between that majority in both Houses and the Executive, not upon his part as I conceive, but by that majority upon him. I was never of the politics of the President, nor he of mine; but at the present time and for some time past his leading measures have received my approval and my hearty support. I think, notwithstanding the number of protests to the contrary in this Chamber, that his policy, as it is termed, is but a continuation of the later policy of the late President, but a continuation of the policy and principles to which the majority of both Houses of Congress stand pledged in the most solemn forms. We now see, though, that this majority, lately the friends of the President, are engaged in a war upon him, and that war manifests itself in various aspects and modes. They denounce him; they denounce his measures, his policy. He is a coordinate branch of the Government; or at least the executive department is, and he is the chief executive officer. He is as independent in his constitutional position in the Government, and in the legitimate exercise of the powers and functions of his office as is Congress in the exercise of its powers and functions, and he ought no more to be assailed by Congress, or to be obstructed in the legitimate exercise of those powers, than Congress should be in the exercise of its powers by him.

Among his powers is the veto. We have seen repeated and persevering efforts made by Congress, with a considerable amount of success, to checkmate the veto power of the President by their achieving, as I think, illegitimately and unconstitutionally, a majority of two thirds, and over two thirds, in both Houses. And one of the objects of the majority in presenting the extraordinary proposition under consideration is to attain and continue a political power that will enable it and its sectional successors to control the future legislation of Congress; to overrule presidential vetoes; to hold possession of and direct all the operations of the Government. But what is the immediate cause that has brought down the majority in such relentless hostility to the President? Let us examine for the object and the *animus*. Under the late Administration the President and Congress were in accord; that is, the good man who then filled the office of President was so flexible in his nature and will that he permitted himself to be driven from his own principles and purposes, often, by the vehemence, energy, and stronger will of the radical leaders in Congress. One of the most celebrated apostles of abolitionism in America, Phillips, remarked on a certain occasion, "Mr. Lincoln is a growing man; and why does he grow? Because we have watered him." And there was a great deal of truth expressed in those few words. The abolitionists in Congress and out of Congress watered the late President. They caused him to grow in the direction and shape that they wished him. They warped him from his own principles and policy to theirs. And what is the great sin of the present Executive of the United States? It is that he will not make himself the leader, the obedient tool of the majorities in

the two Houses of Congress; that his judgment of his powers, of his duties to the country and to the Government, and of what is constitutional, wise, and good for the country, is inconsistent with and may conflict with their party purposes; and because he will not tamely submit his own reason and the conclusions of his own judgment and conscience to their behests.

To prove that this position of mine has not been taken without facts, I will read extracts from a speech of the honorable Senator from Michigan, [Mr. Howard,] delivered in this Chamber some two weeks or more since. That able Senator referred to the measures of the President for restoring relations between the States lately in rebellion and the United States Government, and characterized them as "his policy." The Senator then proceeded to make these remarks:

"I complain of this course of conduct on the part of the Executive, because I believe it to be a usurpation of the authority which pertains not to him but to Congress, and here is the gist of the controversy, here is the bone of contention."

Further:

*"I will say that it is not competent for a military commander in the field, whether he be 'Commander-in-Chief' or acting in any other capacity under the Constitution of the United States, to impart political or legislative rights to the conquered community. That is what I assert. The Commander-in-Chief holds the sword of physical force; all his acts as 'Commander-in-Chief' are connected with the prosecution of the war as such, and go not a single inch beyond the necessities of the war. He has no authority to assume the legislative power that appertains to the Government who appoints him, and whose servant he is, and undertake to exercise legislative authority in the country where he is the conqueror. Let the honorable Senator from Pennsylvania read the numerous cases in Roman and Grecian history, and, indeed, in all other histories, in which attempts have been made on the part of commanders in the field, and he will not find a single instance in which any attempt to exercise legislative authority over a conquered people has been tolerated by the Governmental home." * * **

*"The mere formal question of the power of each House to decide upon credentials is one which I am not discussing. I go far behind that; I go down to the bottom, to the essence of the question, and deny to the President the power to impart to the people of any rebel State any political rights whatever; and I claim that that power belongs to Congress and to Congress alone." * * **

"It is said the States have the right of coming back to Congress. I grant it. They have the right to return to their allegiance and be represented in the two Houses of Congress; but that right does not accrue and cannot accrue until the conqueror, the Congress of the United States, has seen that it is consistent with their interests, with the interests of their people, the interest of the whole people of the United States. We hold them today not by their own will, not by their willing fealty to the Government, not in virtue of their fidelity to the Constitution, but solely, in my judgment, even today, by virtue of this highest law known to communities, physical force."

Mr. President, I have read these extracts from the speech of the distinguished Senator from Michigan, who was upon this illegitimate and hybrid committee of fifteen, raised without any proper authority, acting and coming to conclusions and making recommendations without any sanction or authority, and obligatory upon no person; my purpose being to show the animus and the objects which he and the party of which he is such a distinguished member, have in relation to the President and his constitutional powers in the war which they are making upon him. I will read, with the same purpose, a short paragraph extracted from one of the trusted oracles of this party in the Northwest, the Chicago Tribune, in these words:

"Mr. Johnson is merely the agent of the Republican party, which is the governing party, or, in other words, the Government. He is in duty and in honor bound to carry out its measures and principles. When he refuses to do so he commits a breach of trust, and stands in the light of a swindler."

What is this power called "the Government" by the members of this majority in the Senate during the last Administration? The majority of Congress and the Executive were then in harmony. The Executive was denominated by them "the Government." Gentlemen could hardly rise in their places and utter a sentence upon this floor without referring to the President as "the Government." True loyalty, all loyalty, then consisted in supporting the President—"the Government"—and his measures; and myself and other humble men who had the independence, or the hardihood, to dissent from the measures of "the Government,"—of the President— and to condemn them, were denounced as "copperheads," as "disloyal." You see now, sir, the arrogant, profligate, and monstrous position assumed by this Tribune in Chicago. With him the President is no longer the Government. "The Government" is the majority of Congress, according to its designation. By what authority is the President

deposed and the majority in the two Houses of Congress installed as "the Government?" In this Chamber no Senator now denominates the President "the Government." Nor do I subscribe to any such absurdity. It is an abuse of terms to call either the Congress or the President the Government. The three departments, the legislative, executive, and judicial, and nothing less, constitute the Government. All the powers of government and of sovereignty trusted to the Government of the United States are divided out by the Constitution among the three departments. These departments are coordinate, and in the exercise of their appropriate constitutional powers they are equally independent; and where one is making encroachments upon another, or upon the Constitution generally, and the liberties of the people, it was the intention of the founders, not that one department should be the Government, but that each should be a check upon the other, and each should defend the Constitution and the liberties of the country from the assaults of the others.

Andrew Johnson is the existing impersonation of the chief executive power of the Government of the United States— that power is very limited, to be sure, not extending one particle beyond the powers enumerated in the Constitution, and those with which he is clothed by the laws of Congress within the sphere of its authority so to invest the President with incidental, auxiliary powers as expressed in the Constitution. The powers of the judicial department are enumerated, meted, and bounded out to the Supreme Court and the courts inferior to it, with the same authority of Congress by law to invest it with all proper and necessary incidental powers to execute those expressly delegated to it.

Now, Mr. President, I proceed to state what I understand to be a few plain and self-evident truths as connected with the American system of government:

1. The great leading feature of the complex political system of the United States is, that all sovereignty is divided between the State governments and a General Government common to all the States; and that the affairs of the people with foreign nations, and with each other as residents of different States, are confided to the General Government; and those affairs which relate locally to the people of each State, their institutions, and rights of person and property, were reserved to the States respectively, and are exclusively under the jurisdiction of their governments.

2. The Constitution of the United States forms a Government of delegated and limited powers, and that Government, or any of its departments or officers, has not a vestige of power but what is conferred by the language of the Constitution.

3. Military law exists by the legislation of Congress in the form of the Articles of War, and the Rules and Regulations of the Army. What is called martial law is the overthrow of all law and the domination of the arbitrary will of the military commander. This state of things cannot exist in any place in the United States where the civil law can be enforced by the civil courts with the aid and support of the military power. It is only in such localities where the civil law and courts have been in fact deposed by a hostile military force, and this deposition continues by the actual presence and operation of the cause which produced it, that the will of the military commander becomes, of necessity, the law of the place; and only to the limits and so long as the civil law is thus deposed. So soon as the hostile force is withdrawn, or driven away, or conquered by friendly arms, the civil law and courts are reinstated by the principles of the Constitution, and become again *de facto* as they are all the time *de jure* the supreme law and authority.

Now, Mr. President, these propositions, in their length and breadth, are based upon the Constitution of the United States. They are not original with me. I have learned them. I have learned them from Hamilton and Madison in the *Federalist*, from the debates in the Convention which framed our Constitution, from the debates of the different State conventions that adopted it, from the decisions of the Supreme Court of the United States, particularly the decisions rendered by Chief Justice Marshall and Justice Story, and from the Commentaries of Chancellor Kent. These great truths or principles are a part of our system of government; they are moored in that Government and will abide there as long as it lasts intact by revolution; and I defy the honorable Senator from Michigan and all of his associates here or elsewhere to shake these principles, incorporated as they are in the Constitution.

But, Mr. President, about the year 1860 it became manifest that the American people were fast coming to a civil war. The just authority of the Government of the United States and the execution of its laws, it became apparent, were to be resisted. In the beginning of the year 1861 the banner of revolt, of insurrection, was unfurled. What was the duty of the Government of the United States, of its departments, and of the men who occupied those departments when this demonstration against the laws, authority, and power of the Government was made? They were not to remain torpid, inactive, as stocks and stones. That condition of things had been anticipated by the wise statesmen who framed the Constitution. The Constitution was cradled in a rebellion in the State of Massachusetts

got up by Shays. It was just for the condition of things that arose in 1861 that the framers of the Constitution had made provision, and they had made it by prescribing the manner in which such resistance to the execution of the laws of the United States or such insurrections were to be met. They had designated the departments of the Government and the officers that were to undertake this great work of putting down such insurrections, and coercing obedience to the Constitution and laws, and with what means.

I now propose to examine what each department of the Government was to do in this great work, according to the provisions of the Constitution and laws made in pursuance of it. The Constitution reads thus, in various sections and paragraphs:

"The Congress shall have power—

"To raise and support armies;"

"To provide and maintain a navy;"

"To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;"

"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."

According to my understanding of the Constitution, this short summary embraces every provision of the instrument that invests Congress with any power to act, immediately or remotely, upon the subject of invasion, insurrection, or domestic disturbance in a State. Let us now see what other provisions in relation to this subject have been made by the Constitution, and to what departments or officers of the Government they appertain :

*"The President, " * * * * "before he enters upon the execution of his office, shall take the following oath or affirmation: 'I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve protect, and defend the Constitution of the United States.'"*

"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."

"He shall take care that the laws be faithfully executed."

Those words are not many, but they are comprehensive and explicit, and, in my judgment, they are all that were necessary or intended to meet the great exigence that came upon the country in 1861. How and by whom is such an exigence to be met? What is the oath of you, sir, as a member of this body and of every member of each House? All of us swear to support the Constitution. May the Lord have mercy upon us for the manner in which some of us have disregarded that oath! What is the oath of the President? That he will faithfully execute the office of President of the United States, and will, to the best of his ability, preserve, protect, and defend the Constitution of the United States. The members of Congress are simply to support the Constitution; the President is to preserve, protect, and defend it. He is to fight for it. When it is assailed, it is his duty to wield all the military power with which the Constitution and the laws of Congress have intrusted him for its preservation, its protection, and its defense.

If the execution of the laws is obstructed without force of arms, force of arms cannot be interposed to have them executed, or to aid in their execution. It is only when the authority of the Government and the due execution of its laws are resisted by arms that arms can be interposed for the purpose of putting down the resistance and enforcing the execution of the laws. And who is to interpose the arms? Not Congress. Congress has nothing to do with wielding the military power that may thus be properly invoked. Who is to do it? The President. That is his duty by the Constitution, made so by plain language. He is to execute the office of President of the United States faithfully; that is, to perform all the duties devolved upon him by the Constitution and laws. He shall take care that the laws be faithfully executed; and to do this, when it becomes necessary, he must apply and direct the military power of the United States. He is to preserve, protect, and defend the Constitution of the United States; and to do this, when it is assaulted by men in arms, he, as Commander-in-Chief, must repel the assault by the Army and Navy, and the militia of the States raised, provided, and called into the public service by laws passed by Congress. That is the aid which Congress is to afford him, and that is the only part which it can take in this grave business.

The act of 1793 was the first that was enacted to carry out the provisions of the Constitution for suppressing insurrections, &c. It was found defective, and in 1795 another and a more complete act was passed. In 1861, after the insurrection had broken out, Congress took up the subject again and passed a more elaborate and probably a better considered law, in which the provisions of the act of 1795, so far as they related to the subject of

insurrections, were repealed. I will read a clause from the law of July 29, 1861, drafted, as I understand, by the late Senator Collamer:

"That whenever, by reason of unlawful obstructions, combinations, or assemblages of persons, or rebellion against the authority of the Government of the United States, it shall become impracticable, in the judgment of the President of the United States, to enforce by the ordinary course of judicial proceeding the laws of the United States within any State or Territory of the United States, it shall be lawful for the President of the United States to call forth the militia of any or all the States of the Union, and to employ such parts of the land and naval forces of the United States as he may deem necessary to enforce the faithful execution of the laws of the United States or to suppress such rebellion, in whatever State or Territory thereof the laws of the United States may be forcibly opposed, or the execution thereof forcibly obstructed."

That is a most proper and constitutional provision. It limits itself to the occasions and the exigencies of resistance by force to the execution of the laws of the United States, or a rebellion, which is a great insurrection against the authority of the United States.

Now, sir, the honorable Senator from Michigan says that Congress is the conqueror, and that the people of the rebel States who were subdued by our arms and who capitulated and acknowledged obedience to the authority and laws of the United States occupy the position of a conquered people; and as such are subject to Congress, the conqueror.

Mr. HOWARD. If the Senator from Kentucky will pardon me for a very brief interruption, I should be glad to lay before the Senate a very high authority upon that particular point.

Mr. DAVIS. You can do that at your leisure after I shall have concluded.

Mr. HOWARD. It is no less an authority than Andrew Johnson, who adopted the principle in a deliberate speech made in this body.

The PRESIDING OFFICER, (Mr. RAMSEY in the chair.) The Senator from Kentucky, who is entitled to the floor, declines to yield.

Mr. DAVIS. Mr. President, my principle is to support Andrew Johnson when he is right and to oppose him when he is wrong, and that is the principle upon which I practice in relation to all Presidents and all parties and all Administrations; but I will proceed.

How can Congress be the conqueror of the southern States? Is Congress clothed by the Constitution with any military power? Not a particle. It is invested with the power to declare war, but not to declare war against a State or any portion of the people of the United States, but only against foreign nations. Such is the plain meaning of the Constitution and the ruling of the Supreme Court. That position is conceded by all American statesmen.

The war power of Congress has no application whatever to the suppression of insurrection or rebellion, except merely to exercise the legislative power to raise and support armies, to provide a Navy, and to call forth the militia and to raise the necessary supplies to enable the President to suppress the insurrection and see that the laws are faithfully executed. That fulfills the whole power and duty of Congress in the suppression of insurrection and rebellion; the consummation of the work belongs to the President, and not by the authority of Congress, but the Constitution.

I concede that when the United States is invaded, when a State or a portion of the people are in a state of insurrection, when there is such domestic violence in a State as requires the protection of the United States, to decide when the state of facts amount to either of those conditions does not appertain to the President as "Commander-in-Chief," and is nowhere given to him by the Constitution; yet he is invested with that high discretionary power.

How, then, does he get it? By the act of Congress. First, by the act of 1793; second, by the act of 1795; and lastly, by the act of July, 1861, in the section which I have read. Whence the authority of Congress to invest the President with this power? Here it is in these few words of the Constitution:

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

Mr. President, these provisions of the Constitution and of the laws of Congress have been before the Supreme Court, and have been construed by the final arbiters, organized by the Constitution, after the maturest consideration. I will refer, first, to the case of *Martin vs. Motley*, 12 Wheaton. It came up to the Supreme Court from the State of New York. The President had made a call on the Governor of that State for a militia force. *Martin* had been enrolled and ordered by the proper military authority to report at the place of rendezvous, but

failed. The powers of the President, the duties of subordinate military officers to obey his orders, and the effect upon the militiamen, all arose as questions in the case, and the court, in the opinion, say:

"If we look at the language of the act of 1795, every conclusion drawn from the nature of the power itself is strongly fortified. The words are, 'whenever the United States shall be invaded or be in imminent danger of invasion, &c., it shall be lawful for the President, &c., to call forth such number of the militia, &c. as he may judge necessary to repel such invasion.'"

That is a quotation from the law. Here is the reasoning of the court:

"The power itself is confided to the Executive of the Union, to him who is, by the Constitution, 'the Commander-in-Chief of the militia, when called into the actual service of the United States,' whose duty it is to 'take care that the laws be faithfully executed,' and whose responsibility for an honest discharge of his official obligations is secured by the highest sanctions. He is necessarily constituted the judge of the existence of the exigency in the first instance, and is bound to act according to his belief of the facts. If he does so act, and decides to call forth the militia, his orders for the purpose are in strict conformity with the provisions of the law, and it would seem to follow as a necessary consequence that every act done by a subordinate officer, in obedience to such orders, is equally justifiable. The law contemplates that, under such circumstances, orders shall be given to carry the power into effect, and it cannot, therefore, be a correct inference that any other person has a just right to disobey them. The law does not provide for any appeal from the judgment of the President, or for any right in subordinate officers to review his decision, and in effect defeat it. Whenever a statute gives a discretionary power to any person, to be exercised by him upon his own opinion of certain facts, it is a sound rule of construction that the statute constitutes him the sole and exclusive judge of the existence of those facts. And in the present case we are all of opinion that such is the true construction of the act of 1795. It is no answer that such a power may be abused, for there is no power which is not susceptible of abuse."

In precise accordance to the judgment of the Supreme Court in that case was its ruling in the case of Luther vs. Borden, which arose out of the Dorr rebellion in Rhode Island. I will read one or two short passages from that opinion. Speaking of the act of 1795, the court say:

"By this act, the power of deciding whether the exigency had arisen upon which the Government of the United States is bound to interfere, is given to the President. He is to act upon the application of the Legislature or of the Executive."

That is, when there is domestic violence in a State, as was the case then in Rhode Island.

"And consequently he must determine what body of men constitute the Legislature, and who is the Governor, before he can act."

This principle, as the honorable Senator from Massachusetts [Mr. Sumner] said some time ago, in relation to another matter, runs in several directions. It is an important principle. It has a multiform application; and it may receive other and more important applications in the course of events. I do not know that it will. I hope there will be no necessity for it. If there should be, I have no knowledge that it will be exercised; although it ought, and might be with the plainest sanction of the Constitution, and the highest considerations of duty and patriotism operating upon the President.

"The fact that both parties claim the right to the government cannot alter the case, for both cannot be entitled to it. If there is an armed conflict, like the one of which we are speaking, it is a case of domestic violence, and one of the parties must be in insurrection against the lawful government. And the President must, of necessity, decide which is the government, and which party is unlawfully arrayed against it, before he can perform the duty imposed upon him by the act of Congress."

What was the decision of the President in that case? He decided that the old charter government of Rhode Island was the true and legitimate government of the State; that the Governor, under that charter government, was the true and legitimate executive Chief Magistrate of that State. He decided that the Dorr government was spurious; that the election of Dorr under it, and every attempt to set up and organize a government under the Dorr constitution in the State of Rhode Island was illegal, unconstitutional, void, a wrong, and an outrage upon the existing government, and authorized the existing government to put it and all of its supporters down by force of arms. The President in that case did not interfere by the actual march of troops into Rhode Island, but he declared his purpose to do so, and that declaration induced the insurgents and the Dorrists to submit. Here is what the court say on that point:

"The interference of the President, therefore, by announcing his determination, was as effectual as if the militia had assembled under his orders. And it should be equally authoritative. For certainly no court

of the United States, with a knowledge of this decision"—

That he had determined to interfere simply—

"would have been justified in recognizing the opposing party as the lawful government; or in treating as wrong-doers and insurgents the officers of the government which the President had recognized and was prepared to support by an armed force."

Here is another point stated in this opinion which carries a truth, a principle with it, of which I have an application to make presently:

"In the case of foreign nations, the Government acknowledged by the President is always recognized in the courts of justice. And this principle has been applied by the act of Congress to the sovereign States of the Union."

Let gentlemen ponder a little upon the principle involved in that language. In relation to foreign countries, we all know, as the uniform practice and history of the Government, that whenever the President recognizes an existing *de facto* foreign Government, the Congress and the courts, and all the authorities of the United States, in obedience or in conformity, at least, to the acknowledgment by the President, recognize the existence of the same government. And the court says, "this principle has been applied by the act of Congress to the sovereign States of the Union." Here is the very point decided, that when a State is acknowledged by the President it will then be recognized by the courts, the act of 1795 vesting that power in the President. This opinion, in remarking upon the provision of the act of 1795, which was the subject of the main question in the case of *Martin vs. Mott*, says

"The power given to the President in each case is the same"—

That is, in relation to invasions, insurrections, or domestic violence—

"with this difference only, that it cannot be exercised by him in the latter case except upon the application of the Legislature or Executive of the State. The case above mentioned arose out of a call made by the President by virtue of the power conferred on him by the first clause; and the court said that

—
"Whenever a statute gives a discretionary power to any person to be exercised by him upon his own opinion of certain facts, it is a sound rule of construction that the statute constitutes him the sole and exclusive judge of the existence of those facts.' "

There is no appeal from his judgment; there is no correction of it; there can be no revision of it; it is the law and the fact of the case; and it must be so received by all, not only by military officers who are exercising power in subordination to him as "Commander-in-Chief," but by Congress and by the courts; and such has been the uniform practice of the entire Government and all its officers. The opinion proceeds:

"It is a sound rule of construction that the statute constitutes him the sole and exclusive judge of the existence of those facts.' The facts that make up the case upon which he is to act by moving the armed forces of the United States."

What I have read from the Constitution, the laws of Congress, and the decisions of the Supreme Court, establish these propositions: that in 1861 it was the power, right, and duty of the President to decide whether, in any locality of the United States, "by reason of unlawful obstructions, combinations, or assemblages of persons," or insurrection or rebellion against the authority of the Government of the United States, it was "impracticable to enforce, by the ordinary course, of judicial proceedings, the laws of the United States;" and that his decision of this point is final, and concludes Congress and all the Departments and officers of the Government, and all the people of the United States.

The enforcement of the execution of the laws in the places where the obstructions existed had become a military operation; and all that Congress had the power to do, and which it was its highest duty to perform, was to furnish the President with the men and the money to enable him to take care that the laws be duly executed. That could only be done by the removal, the cessation, the non-existence of further resistance and obstruction, When the work was thus completed, whether by the voluntary submission of the insurgents, or their suppression by force of arms, the office of the President in the important matter was fulfilled; military operations and military expenses in it were to terminate, and Congress was under no obligation to vote more men and more money to put down an insurrection, a rebellion which no longer had existence, or for the enforcement of the execution of the laws to which there was no longer either resistance or obstruction.

But there was a necessity for some power, some officer of the Government to declare when the insurrection was suppressed. There is such a power and such an officer to execute it; and who is he? The Constitution had been attacked by an armed resistance to the execution of the laws, and an attempt to set up an independent power and government within the United States. It is made the duty of the President, by the Constitution, to the best of

his ability to preserve, protect, and defend that Constitution, and to take care that the laws be faithfully executed throughout the United States. To give him the ability to perform those important trusts he is made by the Constitution the permanent Commander-in-Chief of the whole military force of the United States. The law intrusts him with the sole, exclusive, and unappealable power to decide when and where there is an insurrection or an armed resistance to the execution of the laws; and the Constitution and the law authorize him to move the whole military force to suppress the insurrection, to stifle all resistance or obstruction to the due execution of the laws. He is to determine upon and conduct every movement and operation to that end, and to continue them until it is effected. Not Congress, but the President, in fact and of necessity, is the functionary to know and declare when the work has been ended, and then to withdraw the military forces. Congress cannot know when it is done, but he knows because it is being done under his orders, and he is in constant communication with those who are in the performance of it. Congress might not be, as it was not, in session when the late rebellion terminated; but the Senator from Michigan says it was the duty of the President to convene Congress: It might be that a large number of the members of Congress were not then chosen. And for what purpose is Congress to be convened? That it might be informed by the President that he had suppressed the rebellion by the operations of the Army; or that it had terminated by the voluntary submission of the insurgents; and that it might authorize him to withdraw and disband the forces, and stop the heavy expenditure of public money when there was no longer any armed resistance in existence or threatened, but, on the contrary, all was submission, obedience, and peace. Could any proposition be more absurd and unsound? No, sir. The President is the constitutional and legal organ to decide and declare when the insurrection begins, how long it continues, and when it ends; and it is the duty of all the other departments and officers of Government to accept and act upon the particular state of the affair according to his decision and judgment upon it,

But the Senator from Michigan announces that the southern States and people, in consequence of their rebellion, have ceased to be States, and have forfeited all their rights as States and American citizens. That Congress is their conqueror, and holds them this day in the condition of a conquered people, and has the right so to hold them until the interests and the will of the conquerors will allow them to reconstruct the States that revolted and re-admit them as States into the Union; that this whole business of the reestablishment of relations between these States and the Government of the United States is a congressional affair exclusively, with which the President has nothing to do; and that "his policy" of reconstruction is nothing but arrant and audacious usurpation of power, an infringement of the rights and powers of Congress, to which it ought not and cannot submit without degradation.

A most lofty and imperial pretension, truly, made for Congress by the Senator from Michigan! And where is its warrant? Not in the Constitution. If it be there, will some of the Websters, the Dents, and the Storys of the majority in this body refer me to the provision, that I may read it and be instructed? But neither the Senator, nor any of his coadjutors in support of this measure, can find any support for this most extravagant claim of power for Congress in the Constitution. Indeed, he deigns not to place it on so humble a footing, but in swelling phrase claims it for Congress, as the conqueror of those States, and by the laws of war. If there be any right to the appellation of conqueror in the suppression of the rebellion it would appertain to the President rather than to Congress.

But there was no war, no conquest, no belligerent rights in this great and terrible civil strife, according to the sense in which those terms are found in publicists and the laws of nations. The two latter are not named in the Constitution, and as between the United States and the States, in its meaning, spirit, and scope, they have no covert existence there. The term "war" is found in the Constitution, but with no reference to a conflict between the United States and any of the States or any portion of the people. It refers only to contests of arms with foreign nations, and such has been the construction of the Supreme Court and of every American statesman. By the letter, meaning, and spirit of the Constitution, as expounded by all this high authority, Congress cannot declare war against a State or any portion of the people of the United States. Certainly, no State can make war against the United States, and have belligerent rights. It is not war in the sense in which the term is used in international law and as it is adopted by our Constitution. Between the United States and the people or the States lately in rebellion there was, then, no war, no belligerent rights on either side. What was it, and what law applied to and governed it? Upon the part of the revolted States and people it was an armed resistance to the authority and laws of the United States, a great insurrection, though not pervading all nor a majority of the States. It was just such an affair as the men who made the Constitution contemplated might occur, and for which they made provision in it. They provided that the Constitution, and laws of Congress made in pursuance of it, should be the supreme law of the land; that all officers, both Federal and State, should take an oath to support it; that the President, before entering

upon the execution of his office, should take an oath, to the best of his ability to preserve, protect, and defend the Constitution; that he should take care that the laws be faithfully executed; that Congress should have power to raise and support armies, to provide and maintain navies, to levy taxes, and borrow money without limit, if need be, to the utmost capacity of the United States; to provide for calling forth the entire militia of the States to put down the insurrection, and should make all laws which might be necessary and proper to give full effect to the powers which I have enumerated; and that the President should, by his own unquestioned and unquestionable will, as "Commander-in-Chief," move this vast array of military power, land and naval, to suppress the insurrection, to reinstate the authority of the United States, and to enforce the due execution of their laws whenever and wherever they might be resisted or obstructed. In the late great exigence that was all that was needful to be done, all that the Government and authorities of the United States were authorized by the Constitution to do. The wisdom and efficiency of the whole provision has been illustrated by the perfect military suppression of the stupendous insurrection, by the universality and completeness of the submission of the insurgents, by their true and general quiescence, beyond all parallel after such a profound and impassioned upheaving.

But there was a possible national disorder, so deep and so pervasive, but so improbable and so utterly remediless, for which, if it ever should come into being, the wise and far-seeing men who framed the Constitution attempted to provide no remedy. When the General Government should become continuously so perverted and oppressive in its administration as to have caused fixed discontent and hostility to it throughout the United States; when a majority of the State Legislatures would no longer choose Senators in Congress; when they would no longer direct the manner in which the presidential electors of their respective States should be appointed; when a majority of the people of a majority of the States should refuse to elect a Legislature to direct the manner in which their presidential electors shall be appointed, or should themselves have refused to choose such electors, the members of the Convention well knew that the political malady would have reached an extremity when it would be irremediable; and they did not attempt the vain task of prescribing a remedy. They tacitly conceded that the Government which they were about founding would then cease to be, and that the country and its destinies must be submitted to God and the people, and that reconstruction in some form, unseen, unknown to them, must come. But until that final catastrophe all was to be for the support, the defense, the preservation; and vindication of the Constitution and system of government which they had fashioned.

The possible condition of the country, as I have depicted it, is thus adverted to by Mr. Madison, in the forty-third number of the Federalist:

"Should it be asked, what is the redress for an insurrection pervading all the States and comprising the superiority of all the force, though not a constitutional right? the answer must be, that such a case, as it would be without the compass of human remedies, so it is fortunately not within the compass of human probability; and that it is a sufficient recommendation of the Federal Constitution, that it diminishes the risk of calamity for which no possible constitution can provide a cure."

Mr. President, we often hear it asserted that the Government of the United States was made to be perpetual; that it has all the rights of self-defense; that the national life must be preserved. All such language is inappropriate, and expresses ideas not fitted to our country and Government. The Constitution does not expressly provide for its dissolution, but does impliedly. The same power which made it may at any time terminate its existence in any mode it may will.

In the forty-fifth number of the Federalist, Mr. Madison says:

*"The State governments may be regarded as constituent and essential parts of the Federal Government; while the latter is nowise essential to the operation or organization of the former. Without the intervention of the State Legislatures, the President of the United States cannot be elected at all." * **

"The Senate will be elected absolutely and exclusively by the State Legislatures."

The members of the Convention knew as much of the Constitution and the Government which they formed, its structure in all its parts, and its weaknesses, as any of their successors. They knew full well that if a majority of the States and of the people of those States persistently determined not to choose Senators or presidential electors or Representatives in Congress, that the Government was thereby brought to an end. They made no provision to avert that consequence.

The Constitution expressly provides that each State shall appoint, in such manner as the Legislature may direct, a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in Congress; that those electors shall vote for President, and the person having the greatest number of

votes shall be President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest number, not exceeding three on the list of those voted for, the House of Representatives, voting by States and by ballot, shall choose the President.

If all the States should appoint electors, and the majority of them should refuse to vote at all for President, that officer could not be elected, and consequently the Government would be brought to an end. Again, if all the electors should vote for President and no person should receive a majority of the whole number appointed, and the election should thus be devolved on the House of Representatives, voting by States, and the majority of the States should refuse to vote, or voting, to vote for the same person, there could be no presidential election, and in that way the Government would be brought to a dead lock.

In all these and other ways the men who made the Government knew it could be terminated, and they devised no means to avoid it. Their purpose was that it should give liberty and security to the people, and for its strength and permanence should win and rest upon their confidence and attachment; that when it became perverted, corrupt, and oppressive, and the people could no longer consent to its continuance, they should have several modes of bringing it to a close. It has no principle or power of self-perpetuation. It has no right of self-defense. All its departments and officers are bound to support, protect, and defend it; but it is by the use of the powers and means with which they are intrusted by the Constitution and the laws; and they cannot resort to others without usurpation and crime. A Government or being possessed of the right of self-defense may seize and use all means within its reach so far as they may be necessary to enable it to repel attacks upon it, from whatever quarter they may come. The powers of the Government of the United States spring from no such source, and are commensurate with no such principle. They arise wholly from a written Constitution, and exist only to the extent that it, by its language, confers them.

The phrase "national life" is also incorrect, untruthful, and delusive. Life is the state of an organized being in which its natural powers and functions are self-operating and continue its existence. If the States were to cease to exist there could be no continuance of a President and Senate for the nation, and all the organism, the very being of the nation, so imperfect as to be visible, would at time come to dissolution. The national or Federal Government and Union and the States and their governments are essential parts of the same system; but the being, the life of the latter, would continue even if the former were destroyed; but if the latter were to perish the former would die with them. But "national life," "loyalty," and "disloyalty" with us in latter years are only "catchwords" intended to deceive and mislead. Political loyalty in the United States means fidelity to the Constitution and laws, support of those in office, so far as they perform their duties in accordance with them; sympathy and cooperation with all true friends of the Constitution and laws; the maintenance of the division of political sovereignty and power between the General Government and the States as it is made by the Constitution; to the former all that is conferred on it, and to the latter all that is reserved to them by the Constitution; and resisting all assaults upon these principles whether they may proceed from foreign or domestic enemies, private citizens, or men in office and power. This is the only true standard of American Loyalty, and men are loyal or disloyal as their words and acts conform to or depart from it.

But, sir, when the President has, by the agency of the military forces of which he is Commander-in-Chief, occupied the portions of country where the insurrection had been made and suppressed it, what is next to be done? If the local governments have been overthrown or disorganized, the Commander-in-Chief, by his subordinates, must, *ad interim*, organize a *quasi* government to prevent crime and to protect persons and property until the government of the States can be reorganized and put into operation. But this military government arises from the exigency and necessity of the occasion and with that it passes away and is superseded by the State governments. What else is the President to do? He is to give his counsel, aid, and protection to the people of the State in their efforts to reorganize their government by electing and installing their Governor, members of the Legislature, and judges. And what is to be done to reestablish relations between the State and the Government of the United States, and what departments and officers are to do it? The President is to act first. He issues his proclamation announcing that the insurrection is suppressed. He appoints district attorneys, marshals, postmasters, collectors of customs and internal taxes for the State, and he reestablishes the mails, collects the public revenue, and takes care that the laws of the United States are executed in them; and this is what I understand he has done in relation to the rebel States — this is his policy. Then the judicial department takes up the matter. The Supreme Court looks over its docket, and finds upon it cases from the States lately in rebellion. It knows and concedes the fact that the rebellion has been suppressed; the President by his public proclamation has so informed it and the country. It then proceeds to acknowledge those States lately in rebellion as present existing members of the United States, and in conformity to the Constitution and laws of Congress orders the cases brought from them up to this court before

the insurrection, and any during its continuance, to be set down for hearing, which could not be done unless the localities from whence they come were existing States and in the Union.

During the entire period of the insurrection there were members of the Supreme Court, resident of States actively engaged in the rebellion until it was put down, and who had been assigned to circuits constituted of the rebel States; and they formed part of the court at each term, just as the judges resident in and whose circuits were formed of States which the rebellion never reached.

But a few days since an application was made to Justice Nelson, of the Supreme Court, for a writ of *habeas corpus* on behalf of a prisoner confined in one of the penitentiaries of the State of New York. On the return of the writ, and the bringing up the prisoner before the judge, it appeared that since the insurrection had been suppressed he, a citizen of South Carolina, had been tried by a military commission on a charge of murder, found guilty, and condemned for a long period to confinement in the penitentiary, where he was held under said judgment. The learned judge ruled that South Carolina was a State of the United States, in the Union, and possessed of, or entitled to, all the rights and powers of a State; that the trial of the prisoner for the crime of murder belonged properly and exclusively to the authorities of that State; and that the judgment of the military commission was void and of no effect; and the judge ordered the prisoner to be discharged.

But, Mr. President, what have been the action and decisions of the Senate on questions dependent upon the fact whether the States in which the rebellion existed were States in the Union? Before the extra session of Congress in 1861 Virginia had passed her ordinance of secession, and was then the chief power of the rebellion. Her State government existing at the beginning of the insurrection had been dissolved, and most of its officers had renounced the Government of the United States and adhered to the southern confederacy. A new State government was organized by her loyal citizens who were in a small minority; two gentlemen, Messrs. Willey and Carlile, were chosen by the new Legislature to be the Senators of Virginia, and the new Governor, Peirpoint, gave them his commission under the great seal of the State as Senators of that ancient Commonwealth. Those gentlemen brought their credentials and asked to be admitted as Senators from the State of Virginia. The President, then Senator Johnson, himself representing the rebel State of Tennessee, presented their credentials to the Senate and moved that they be remitted to take the oath and their seats as Senators. This was opposed by Mr. Bayard, who moved that their credentials be referred to the Committee on the Judiciary; but this was strenuously resisted by Senators Johnson, Collamer, Hale, Trumbull, and others. I will read passages from some of their speeches, and first, of Senator Johnson:

"Now, Sir, we have the credentials here fair on their face. They purport to be the credentials of Senators elected by the old Commonwealth of Virginia, signed by a person purporting to be the Governor of Virginia, and under the great seal of the State. This appears to be fair. But Senators say, 'Oh, well; but we know this is not the Legislature of Virginia; there is another Legislature, and there is another man who is Governor.' Well, if you are going outside of these credentials to rely on the knowledge which you have of the condition of things in the State of Virginia, then you know that the old Governor of Virginia and the old Legislature are in rebellion against the country. They are rebels and traitors in arms against the Government and are not to be recognized as the government of Virginia, but are to be recognized as enemies and traitors, whom the whole power of this Government is now put forth to subdue and bring into obedience to the Constitution and the laws; and I would to God that the power was used to bring them to obedience!"

Senator Collamer said:

"There are two difficulties which are suggested in this case. First, it is said that this is a certificate coming from a new government of Virginia, a new organization separated from the rest of the State, but acting for the State as a State. This is in the nature of a judicial proceeding; we are now judging of the qualifications of our members. It is not at all an uncommon thing in our highest tribunals that points arise in the investigation of cases where the court are constrained to say 'that is a political question; with that the courts have nothing to do.' For instance, whether a foreign Government recently commenced has become an independent people, whether in court it is to be treated and considered as a nation, is not a point on which the court can decide. That is a political question; and if the executive head of the Government has received ministers from that power, recognized it as a power on earth, the courts cannot go into the question whether he did it right or did it wrong. It is a matter of political action, and the political power is what settles it, and we cannot examine into it any more.

In analogy to that, in this judicial proceeding must we not be governed by the fact that the government of Virginia that has executed these papers and sent them to us is recognized by our

Executive? They have called on him for militia and have received militia from him. He recognizes them as the government of Virginia. It is a political question; it is settled. There is no occasion for our inquiring further into that. We as a judicial body on this question have nothing to do with that. Here is the Executive of that State recognized by the Executive of this Government; there is the end of that subject. Whether a course of proceedings might be instituted among us to call on our Executive to know whether he did this rightfully or not is altogether a different affair. They are de facto the government recognized by us. We have no more to do with that."

All the Republican Senators who entered into the debate, including the chairman of the Committee on the Judiciary, [Mr. Trumbull] sustained the views of Messrs. Johnson and Collamer, and when the Senate came to vote on the motion to refer the credentials of Messrs. Willey and Carlile to the Judiciary Committee for investigation, and a report upon the facts and principles involved, there were, in favor of the motion: Bayard, Bright, Polk, Powell and Saulsbury. Against it: Anthony, Bingham, Browning Chandler, Clark, Collamer, Cowan, Dixon, Doolittle, Fessenden, Foot, Foster, Grimes, Harlan, Harris, Howe, Johnson of Tennessee, King, Lane of Indiana, Lane of Kansas, Latham, McDougall, Morrill, Pomeroy, Rice, Sherman, Simmons, Sumner, Ten Eyck, Trumbull, Wade, Wilkinson, Wilmot. Immediately upon this overwhelming vote, and without further question, Messrs. Willey and Carlile were permitted to be sworn, and took their seats as Senators from the old Commonwealth of Virginia. In this matter the Senate was sitting and acting as a court and was adjudging of the "elections, returns, and qualifications of its own members;" and what points did it decide and sustain?

1. That notwithstanding the State of Virginia had passed an ordinance of secession and was in the condition of armed and active insurrection against the United States, still she was one of the United States and in the Union.

2. That this great question was not a judicial, but a political question; and as the Senate, in its connection with the matter, was a *quasi* court, it could take no cognizance of this political question; but only of judicial questions, connected with the elections, returns, and qualifications of the applicants as Senators from Virginia.

3. That the President is the proper officer and power to decide that political question.

4. That he having decided it affirmatively, the Senate and all the departments and officers of the Government were bound by his decision, and must act upon the fact that Virginia was one of the United States.

5. That Messrs. Willey and Carlile having the proper returns or evidence of their election in the commission of the Governor under the great seal of the State, were entitled *prima facie* to their seats; that they were to be admitted to them at once; and all question of their right to hold them must be afterward examined by the Senate through the medium of its committee, and be judicially decided by it. The Senator from Michigan [Mr. Howard] has announced to the Senate that he was not then a member of this body; that if he had been, he would have voted against the admission of Messrs. Willey and Carlile as Senators from the State of Virginia. He may now think so; but I am inclined to the belief that he would not have taken that position alone and have broken the unanimity of his party upon that question. But West Virginia was afterward admitted as a new State into the Union, and Senator Willey residing in and being chosen one of the Senators from it, a senatorial vacancy occurred in the old State of Virginia; and while the most of her territory was still occupied by the rebels in arms, the body calling itself her Legislature chose Mr. Bowden as a Senator to fill the vacancy. He appeared, claimed his seat, and was permitted by the Senate to take it; and the Senator from Michigan interposed no objection. But he says that the precedent of admitting Senators from States in rebellion had been made in the case of Messrs. Willey and Carlile, and he yielded and acknowledged the authority of that precedent. This course of the Senator was very reasonable and proper, because that precedent was sustained by the name and authority of that eminent jurist and statesman and pure and elevated patriot, the late Senator Collamer, upon whom the Senator a few days since expressed in this Chamber a high but most just panegyric. If the Senator from Michigan; in the case of Mr. Bowden, conceded the authority of the single precedent in the admission together of Senators Willey and Carlile, and chose to give the high authority of his name to another in the case of Mr. Bowden, when the rebels were still fiercely continuing their insurrection; now, one year after it has been thoroughly suppressed, by the surrender of all their armies, and the unconditional submission and obedience of the whole people of the States that were in insurrection to the laws and authority of the United States, with what consistency or reason can the Senator from Michigan oppose the admission of Senators from those States?

But, Mr. President, both Houses of Congress, including the Senator from Michigan, have admitted, in the gravest and most important form, that all the rebel States, notwithstanding they were making a great struggle in arms for their separation and independence, were States in the Union, by the passage of the law of 1862 apportioning representation among all the States according to the census of 1860, in which each of the rebel States are named, and its proper number of Representatives given to it by the same rule and in similar language as is

applied to the States unaffected by the rebellion.

Again, all those States voted for the adoption of the amendment to the Constitution, by which slavery was abolished throughout the United States, and with the approval of the Government and all its departments and officers, and also of the entire people, their votes were counted in favor of its adoption. And the very amendment now proposed, by its specific language, is required to be referred for acceptance or rejection to the States lately in rebellion. In the face of the *résumé* which I have made, is it not passing strange that any Senator, or any intelligent man, should hold to the position that by their ordinances of secession and abandonment of the Union by their governments, and as a consequence of armed resistance to the authority and laws of the United States by the governments and people of those States, they ceased to be States of the Union, and forfeited all their rights, political, civil, and personal, under the Constitution; that the termination of the war and their unconditional submission and adherence to the United States, left them in the condition of a conquered country and people, with their governments utterly dissolved; that Congress or the President of the United States become possessed of all the powers and rights of a conqueror over them; that they could be held in that condition at the pleasure of the conqueror, and could become States again only by Congress passing an enabling act and readmitting them into the Union as States, subject to such terms and conditions as it might choose to impose upon them? All this is revolting heresy, and at war with our Constitution, its letter and spirit, and our whole political system.

I have said that an insurrection or rebellion against the United States is not treated by our Constitution as a war, but as a great domestic disorder; and the power to meet it, with which the Government is invested, is in the nature of the police power. Police in its large sense, according to Blackstone, is the internal regulation and government of a kingdom or State, and all the military power of a State is the final reserve of its police power. In the United States the militia of all the States is expressly made so, by Congress being empowered to provide for calling forth the militia (without any limit) to execute the laws of the Union, suppress insurrections, and repel invasions. When a riot is suppressed by the local police power no change in the order of things is produced. There may be an insurrection against the government and laws of a city, as has occurred in Baltimore and New York. The insurgents may overthrow the city government and dominate it for days. It may require the extraordinary reserves of the police power to be intervened to suppress the outbreak; but when that is done, no destruction or revolution or change of the city government has taken place; its organism and powers have been obstructed in their operation, but they remain perfect in their existence; and so soon as the obstruction is removed they resume their authority, and have their effect as though there had been no interruption. When there was domestic violence in Rhode Island, caused by Dorr's rebellion against the State, the power of the United States was invoked for its protection. If the rebel government had overthrown the legitimate government and driven all its officers from the State before the United States, had acted in the matter, and afterward their military power had subdued the insurgents and occupied the State, it would only have been for the restoration of the deposed government to its authority in the State, and no measure would have been necessary to effect that; but it would have taken place at once spontaneously upon the detrusion of the rebel government. The United States would have been the victor, but not the conqueror, and would have had none of the power or rights of a conqueror. Their army would have been there in the performance of a special service, a duty enjoined by the Constitution, solely for the protection of Rhode Island and to reinstate her government; it would have had no authority to act further, and there could be no other legitimate consequence of its action. So where there is insurrection or rebellion against the United States, although both the people and the governments of States may have embarked in it, the duty, business, and authority of the Government of the United States is to suppress it, nothing more. That is all that the Constitution authorizes to be done in the case, and when that is effected the only consequences are that the Constitution, laws, and authority of the United States are reinstated; the States, their governments and people, that were involved in the revolt, are reduced to obedience to them; the Federal and State governments resume all their powers, and the people all their rights, except those of which the law may have deprived them; and things move on in the same relations as before the disturbance.

The only objects and ends of the power to suppress insurrections and rebellions are to support, protect, and preserve the General and State governments; to defend and perpetuate the union of the States under the Constitution; to oppose and arrest revolution, not to make it, and to hold the States in the Union, not to put them out of it. All this can be done only by the armies of the United States marching into the States in rebellion, and subduing the rebels; and the proposition that the successful use of the means which the Constitution authorizes for no other purpose than to avert those consequences, and which defeated the rebels in their great efforts to effect them, should of itself produce them, is a monstrous absurdity.

No, Mr. President, a State once admitted into the Union is there in perpetuity unless displaced by revolution,

by force of arms, or in some other form. The State cannot take herself out, nor can the Government of the United States, or both together, effect that by any arrangement. There may be a rebellion so formidable as to dominate a State and hold possession of it, and suppress the authority and laws of the United States in it for a time; a State may be invaded and occupied by a foreign enemy, and a hostile government established in it for years; but in either state of case she remains all the time, *de jure*, one of the United States, a State in the Union: and on the suppression of the rebellion, or the expulsion of the foreign enemy, by the power and effect of the Constitution and the inherent capabilities of the State, all her rights, powers, and functions would resume their operation; and the relations between her and the United States would be reestablished. There would have been no dissolution of the State, and there would be no need and could not be any reconstruction of it. A large part of the State of Maine was taken possession of by the armies of Great Britain in the war of 1812, and a foreign government established over it; and upon the withdrawal of that army the suspended authority and laws of Maine resumed their operation without any legislation, State or national. Congress has the power to admit a new State into the Union once, and that is all the power it has in relation to the admission of States. It cannot eject and readmit States, either new or old.

The only rehabilitation of the States lately in rebellion that is needed, or that is consistent with the Constitution, is, for the United States, by the different departments of its Government, to fulfill their appropriate duties to them. That has already been done by the executive and judicial departments; the legislative only continues to be contumacious; and what has it omitted to do to make complete and perfect the relations between those States and the United States?

The Constitution and laws of Congress provide that each one of those States shall have a certain number of members in the House of Representatives of Congress, and the Constitution further declares:

"The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof," &c.

Those States, six months since, respectively elected their Senators and Representatives, who, early in the session, appeared with their credentials and asked of their respective Houses to be admitted as members, and their admission would have completed the reestablishment of relations between those States and the United States and their government.

The Constitution makes each House of Congress "the judge of the elections, returns, and qualifications of its own members;" and authorizes it to punish its members for disorderly behavior, and with the concurrence of two thirds to expel a member. But it confers no power on the Houses separately, or on Congress, to excise a State for any cause from all representation in it; and yet by what they term a concurrent resolution, which no person contends to have any constitutional or legal validity, they have ostracized the eleven States lately in rebellion by refusing to admit wholly their Senators and Representatives, however loyal they may have been to the United States throughout the rebellion. They thus mutilate Congress by cutting off twenty-two Senators and sixty-one Representatives, and exclude eleven States from taking any part in the Government. But the Constitution is mandatory, that every State shall have two Senators, and a number of Representatives in proportion to their population. As a pretext to evade or defy this vital principle, that majority at the beginning of this session assumed the position that those States by their rebellion had ceased to be States in the Union, and on being subjugated by the armies of the United States had been reduced to the condition of a country conquered by them, and were, therefore, not entitled to have representatives in Congress or take any part in the Government. This most extraordinary position was never taken until long after the rebels had made unconditional submission to the Government and laws of the United States. It has not a vestige of authority or sanction in the Constitution, and is in opposition to the frequent and unbroken legislation of Congress to December last, and of every measure, proclamation, and utterance of the Executive, and every act of the judiciary touching those States from the breaking out of the rebellion.

Congress stands concluded on that question by having levied a direct tax on those States and apportioned representation to them *eo nomine* as States in the Union, by two several acts passed while the rebellion was raging. This puissant majority of the two Houses sends forth its imperial edict that the people of those States are not sufficiently loyal to be readmitted as States into the Union and to take part in the Government; that they must improve their loyalty by submitting to a probation before it will allow them to come back and have any share in governing themselves. But it most graciously informs them that if they will amend their constitutions, by introducing an article giving suffrage to the negro, it would receive that as evidence of their perfect loyalty and readmit them as States into the Union upon that article as a fundamental and unalterable condition, and their Senators and Representatives should be permitted to take their seats. But whether it would respect or obliterate

State lines as they had existed, whether it would permit the reorganization of eleven, or would dictate a half dozen, or what number of States out of that disorganized portion of the territory of the United States, that dominating majority has not yet spoken. Was there ever asserted before in the whole world such an unauthorized and impudent pretension?

The first I ever heard of the rebel States having abdicated or forfeited their rights, and being no longer States in the Union, was in February, 1862, when the Senator from Massachusetts [Mr. Sumner] offered in the Senate a series of resolutions asserting that theory. If there was another Senator who accorded with this doctrine, there was then no utterance of it in the Senate. I have become somewhat acquainted with that Senator's dominating idiosyncrasy, and I regarded the propositions stated in his resolutions only as some of his characteristic vagaries. However, a few days afterward I presented a series of resolutions, which I regarded as the negation of his, and which I stated at the time I intended as a counterblast. I will read those offered by myself:

"1. Resolved, That the Constitution of the United States is the fundamental law of the Government and the powers established and granted and as pointed out and vested by it, the limitations and restrictions which it imposes upon the legislative, executive, and judicial departments, and the States, and the rights, privileges, and liberties which it assures to the people of the United States, and the States respectively, are fixed, permanent, and immutable through all the phases of peace and war, until changed by the power and in the mode prescribed by the Constitution itself; and they cannot be abrogated, restricted, enlarged, or differently apportioned, or vested by any other power or in any other mode.

"2. Resolved, That between the Government and the citizen the obligation of protection and obedience form mutual rights and obligations; and to enable every citizen to perform his obligations of obedience and loyalty to the Government it should give him reasonable protection and security in such performance; and when the Government fails in that respect, for it to hold the citizen to be criminal in not performing his duties of loyalty and obedience would be unjust, inhuman, and an outrage upon this age of Christian civilization.

"3. Resolved, That if any powers of the Constitution or Government of the United States, or of the States, or any rights, privileges, immunities, and liberties of the people of the United States, or the States, are, or may hereafter be, suspended by the existence of this war, or by any promulgation of martial law, or by the suspension of the writ of habeas corpus, immediately upon the termination of the war such powers, rights, privileges, immunities, and liberties would be resumed, and would have force and effect as though they had not been suspended.

"4. Resolved, That the duty of Congress to guaranty to every State a republican form of government, to protect each of them against invasion, and, on the application of the Legislature, or Executive thereof, against domestic violence, and to enforce the authority, Constitution, and laws of the United States in all the States, are constitutional obligations which abide all time, and circumstances.

"5. Resolved, That no State can, by any vote of secession, or by rebellion against the authority, Constitution, and laws of the United States, or by any other act, abdicate her rights or obligations under that Constitution or those laws, or absolve her people from their obedience to them, or the United States from their obligation to guaranty to such State a republican form of government, and to protect her people by causing the due enforcement within her Territories of the authority, Constitution, and laws of the United States.

"6. Resolved, That there cannot be any forfeiture or confiscation of the rights of person or property of any citizen of the United States who is loyal and obedient to the authority Constitution, and laws thereof, or of any person whatsoever, unless for acts which the law has previously declared to be criminal, and for the punishment of which it has provided such forfeiture or confiscation.

"7. Resolved, That it is the duty of the United States to subdue and punish the existing rebellion by force of arms and civil trials in the shortest practicable time, and with the least cost to the people, but so decisively and thoroughly as to impress upon the present and future generations, as a great truth, that rebellion, except for grievous oppression of Government, will bring upon the rebels incomparably more of evil than obedience to the Constitution and the laws.

"8. Resolved, That the United States Government should march their armies into all the insurgent States, and promptly put down the military power which they have arrayed against and give protection and security to the loyal men thereof, to enable them to reconstruct their legitimate State governments, and bring them and the people back to the Union and to obedience and duty under the Constitution and the laws of the United States, bearing the sword in one hand and the olive branch in the other, and while

inflicting on the guilty leaders condign and exemplary punishment, granting amnesty and oblivion to the comparatively innocent masses; and if the people of any State cannot or will not reconstruct their State government and return to loyalty and duty, Congress should provide a government for such State as a Territory of the United States, securing to the people thereof their appropriate constitutional rights."

What is the principal object of the majority of the two Houses of Congress in playing this bold and desperate political game? They are in power, and are resolved to hazard everything to hold on to it. They have told us in both Houses, and their papers have echoed it a thousand times, that for three fourths of the period since the adoption of the Constitution the southern States had had possession of the Government, and controlled its power, patronage, and operations. They reasoned with themselves thus: if the late slave States, with a population of 12,240,500, when the free States have but a small fraction under 20,000,000, and with one fourth less of Representatives in Congress and not so many presidential electors by a fifth, could hold possession of the General Government three fourths of the time, what chance will there be for us if the freeing of their slaves is allowed to have the effect of adding thirteen to their Representatives, and the same number to their presidential electors? The South will be as one man against us, and uniting with the copperheads in the other States, we shall be ejected from power with no hope of a return. We can prevent our overthrow only by a great augmentation of our political power, for which we have two resources. Our friends dominate in all the Territories. It is true they have each only a population amounting to about one fifth of the ratio of a Representative, but nevertheless we must erect them into new States. It is true they would be of the English rotten-borough system, but still they each would have one Representative and two Senators and three presidential electors. We want the increased power that they would give us, and we are entitled to it by the highest law which we know or acknowledge — the law of party necessity and our own self preservation in office. This general counsel was probably continued: but our main hope and reliance must be upon the negro vote, and we must devise some mode by which to give to freedmen the right of suffrage. To us they owe their freedom, and they know and are grateful for it; let us place in their hands the great lever of political power, suffrage, and we will put them under obligations that will bind them to us at least for this generation. Reenforced by the vote of the freedmen, we can carry the next presidential and congressional elections, and secure to ourselves the continuance of power, its offices and rich spoils. We have, too, that piece of cunningly devised machinery, the Freedmen's Bureau; that is of itself a government; our convenient collateral; by our management of it we can keep up distrust and hostility between the black and white races in the southern States; we can get possession of the freedmen, the only laborers in cotton-fields, which will give us, also, necessarily, the possession of those fields; and with the aid of our friends and accomplices, the officers and agents of the Freedmen's Bureau, and their supporting military police, we will be the cotton kings, and control the political power of the southern States.

This is a compend of the schemes and policy of the radicals, and explains why the country cannot have union, peace, and the reinstatement of the Constitution, and laws, and the admission of the southern States to their rightful power in the Government though the war has been so long over. The Senators and Representatives of those States admitted, and the radicals would be in the minority in Congress, and be soon exiled forever from office and plunder. Their cry for justice and protection to the freedman is a most hollow pretext of ambition and selfishness under the guise of justice and humanity.

Their scheme is not characterized by wisdom, even in the councils of wickedness; but it is preeminently novel, daring, unpatriotic, and reckless of justice, law, and the Constitution. The admission as States into the Union of Territories with not more population than a single county should have to maintain its local government and institutions; the excision of the eleven southern States from the Government of the United States; the expulsion of Senator Stockton, of New Jersey, from this body; the organization and proposed enlargement of the Freedmen's Bureau; the civil rights bill; the formation of a novel and anomalous cabal to devise in its secret conclaves most important and unprecedented measures to be registered and passed by the two Houses; the character of the measures which it reported and recommended to Congress; the submission by the majority of the most important questions of policy and constitutional law to a secret caucus, and their agreement that every man would ignore the conclusions of his own judgment and conscience where they might differ from the decisions of the caucus, and, regardless of all conflict with the Constitution, and all sacrifice of the public good, they would support its decisions — it is difficult to believe, that in this early age of our country, so near to the steadfast and stainless virtue of our fathers, a party should in the presence of the American people deliberately accept such a horrible programme and live a day; but it is impossible that it can survive long!

Mr. President, to see scores of "tinkers" in ignorance, conceit, and frenzy dashing at the Constitution, disadjusting its admirable harmony, mutilating it of some of its most valuable and vital principles, and raging to

deform it with their vicious crudities, it brings up the idea of a herd of bulls breaking into a china store of matchless beauty and value, tramping around, and disorganizing and befouling everything which they did not break and demolish.

The Constitution of the United States is the consummation of all statesmanship. Never before or since it was formed was there employed so large an aggregate of ability, experience, and virtue in founding a Government. It was to be made for thirteen independent sovereign States, and the great objects to be secured by it were liberty, empire, and strength. The States had each for itself a perfect government, and their Articles of Confederation for the union and defense of all had proved wholly inefficient. The State governments were preserved, and all sovereignty and political power, but what was delegated by the Constitution to the common Government, was retained by the States respectively; and each one was left in the exclusive possession of the power to govern and control its own people and affairs, so far as they were local to the State; and the affairs of the common Government, of the States, and the people of the different States, in their relations with foreign nations and each other, were intrusted to the common Government. It was a mixed Government — in some of its features national, in some Federal, and in others blended, and a few were unique. Its powers were carefully arranged into three general classes, legislative, executive, and judicial, and each assigned to a separate and coordinate magistracy, and their connections with each other were adjusted with great skill, to make them mutual checks and balances and prevent their encroachments on the rights and liberties of the people and the powers of each other. Without reading the masterly and luminous analysis which Mr. Madison, in the forty-ninth number of the *Federalist*, gives of it in the extent, nature, classification, and division of its powers, and the sources from whence they are derived, I will present to the Senate his closing summary:

"The proposed Constitution, therefore, even when tested by the rules laid down by its antagonists, is, in strictness, neither a national nor a Federal Constitution, but a composition of both. In its foundation it is Federal not national; in the sources from which the ordinary powers of Government are drawn it is partly Federal and partly national; in the operation of those powers it is national, not Federal; in the extent of them, again, it is Federal, not national; and finally, in the authoritative mode of introducing amendments, it is neither wholly Federal nor wholly national."

Mr. President, to eradicate or change materially one of the important principles of this complicated piece of political [sic] machinery is a very grave business, and the effects in marring its symmetry and perverting its operations can only be known by time and experience. It may, however, always be certainly assumed that they will prove greater and more mischievous than they were intended or even anticipated to be. If there is any human institution which ought to fix permanently the affections, confidence, and veneration of the American people, it is the Constitution made for them by the wisest and most virtuous statesmen that have ever lived in the tide of time. It is not, cannot be free from imperfections; but what seem often to many persons to be imperfections are not; they are frequently excellencies. The remedy of a seeming or even real defect may prove to be a greater one; it may even introduce several. When the Constitution is retouched, the movement should be made by able, patriotic, and pure men, who are further qualified for the difficult and important work by the study of its principles and the close observations of its practical workings for long years, and at a time when the public mind is profoundly composed.

Just at the close of the great civil war, when the people are all divided in their judgment as to the constitutionality, justice, and wisdom of the policy upon which the party in power have conducted it; when another great party out of power believe that the whole country have been wronged by frequent infractions of the Constitution, and the usurpation of vast powers for most sinister purposes by those having possession of the Government; and that they particularly have been outraged and oppressed by a wanton and tyrannous exercise of this usurped authority, and are exasperated by a keen sense of their wrongs, and a burning desire for satisfaction; when the ruling party itself is torn by a conflict between its majority in the two Houses of Congress and the President and their friends and partisans; and when it is menaced with defeat and ejection from power at the next general election, and its chiefs and leaders only want to know what means promise to give them success, and are ready to adopt them, however desperate and profligate they may be; at a time when those chiefs and leaders dominate, not only in Congress, but in the Legislatures of all the free States. and their desire for the continuance of their power is so intense, so exorbitant, so impure that they would sacrifice every claim of justice to individuals, the wisest measures of policy for the whole country, and the most valuable principles of the Constitution to achieve their ends; at such a time, surely there should be no changes or intermeddling with the Constitution. If the States were all fully represented in Congress every sound head and heart would shrink from the idea of attempting, at this time, any alteration of the Constitution. But for a less number than a majority of the two Houses of Congress to decide to change essentially the Constitution, and to prelude the work by the

unconstitutional exclusion of all, the Senators and Representatives from the eleven States which are especially and so greatly wronged by the proposed amendments, and all of which would be defeated by the presence of their representation, is scandalous and shocking to the last degree. The condemnation of this iniquitous work by the people of the United States is certain, and will be speedy.

But the work has commenced, and in the spirit and manner that might be expected. A proposition to amend the Constitution must be initiated in Congress and receive the vote of two thirds of both Houses to authorize Congress to submit it to the States; and it is with Congress to require the States to act upon it either by their Legislatures or their conventions chosen for that purpose; and it must receive the vote of three fourths of the States to become a part of the Constitution. Such are the guards with which the Constitution is fortified against all hasty innovation, and by such large majorities of the two Houses of Congress and the States, it was intended to secure also the sanction of a large majority of the people.

What constitutes the two Houses of Congress, the vote of two thirds of both of which is required to pass a proposed amendment of the Constitution?

"The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislatures thereof."

And each State is entitled to Representatives upon an apportionment made among them, upon the basis of their population, by act of Congress. And,

"Each House shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each House shall constitute a quorum to do business; but a smaller number may adjourn from day to day." &c.

The question arose soon after the adoption of the Constitution, in each House, what number of its members were necessary to form a quorum to do business; and it has been often and uniformly decided by them that a majority of the whole number of each, as organized by the Constitution and law of Congress, and no less number, formed a quorum to do business. There being now thirty-six States, the Constitution fixes the number of the present Senate to be seventy-two; and a quorum to do business is a majority, which cannot be less than thirty-six, and it would take that number of Senators even to consider a proposition to amend the Constitution; but to pass it, the Constitution requires not two thirds of a quorum but two thirds of the Senate. Thirty-six Senators being a quorum, the Constitution never intended and does not authorize twenty-five of its members either to pass a proposed amendment or to overrule the President's veto of an act of Congress; but requires a majority of the Senate, thirty-six Senators, to do both these grave and responsible acts.

The Senate in May, 1864, long after the Senators from the eleven States had withdrawn, under the great stress of the war, passed a resolution in these words:

"Resolved, That a quorum of the Senate consists of a majority of the Senators duly chosen."

The vote on this resolution was — yeas 26, nays 12. Two years before, a resolution of the same purport was offered in the Senate, but it was opposed with great ability by the late Senator Foot and Senator Foster, and the Senate then manifested so decided an indisposition to pass it that it was not pressed to a vote.

When the Legislature of any State of the United States have elected a man to the Senate, he is "duly chosen;" and according to the decision in the case of the two Senators from West Virginia, Messrs. Willey and Carlile, if a person present himself to the Senate with his return of election in form, it is *prima facie* evidence of his due election, and he is entitled to be admitted to his seat; and all questions impugning his right to it, even the fact of his having been duly chosen, can only be inquired into by the Senate after his admission. As stated in the debate on that occasion, the unbroken practice has been in conformity with that position; and of many cases and precedents there is not one in conflict with it. So that according to the provision of the Constitution, the precedent set in the case of Messrs. Willey and Carlile, and the resolution of 1864, every man who has been elected a Senator from a State lately in rebellion, by its Legislature, and who has the return of his election in due form, is entitled *prima facie* to membership, and should be permitted to be sworn and to take his seat. All of the eleven rebel States by their Legislatures have chosen two Senators; but if they were admitted the radicals, instead of having two thirds, would be in a minority and could not pass one of their unconstitutional acts, much less a proposition to amend the Constitution. It therefore became a necessity, a dire necessity with them, that they should trample under foot the provisions and principles of the Constitution, and of the laws which they had passed, and their own precedents and resolution; and that from radicalism they should proceed to revolution.

Hence at the very beginning of the session they organized their revolutionary tribunal, the committee of fifteen. Then they take up the extravagant position of the Senator from Massachusetts, [Mr. Sumner,] and boldly assert that the States lately in rebellion have ceased each to be one of the United States, and therefore have no

right to send Senators and Representatives to Congress. But whether their dissolution as States took place when their ordinances of secession were respectively made, or when they appeared in insurrection against the United States, or when their armies surrendered to Grant and Sheridan, or when they dissolved their confederate governments, and submitted to all the terms and conditions imposed upon them, and acknowledged unconditional obedience to the Constitution and laws, these revolutionists have not informed the country. They do not refer to the Constitution to sustain this extravagant position, because there is no warrant for it there. They claim for themselves, as the Congress, the results of the achievements of the armies of the United States, operating legitimately under the Constitution to suppress insurrection, as inuring to them, the conquerors of the southern States and people, under the laws of war. The Senator from Michigan, [Mr. Howard,] in the tone and manner of a conqueror, defiantly asserts this claim for Congress, and refers the Senator from Pennsylvania [Mr. Cowan] to all the precedents in Grecian and Roman history to support the claim.

In my opinion, it is one of the most fruitful causes of the errors of our legislators that they go outside of the pale of the Constitution into other Governments to search up powers for that of the United States. It has no powers but what were conferred by the Constitution, and all of them are either expressly enumerated or are embodied in the clause that gives to Congress the power to pass all laws which are necessary and proper to carry into execution the powers expressly given to it or some department or officer of it. No power or principle of any other Government is part of ours, unless it be embodied or adopted by the language of the Constitution; and no implication can establish a power in the Government in hostility to or inconsistent with any express provision of the Constitution. As the principles of our religion are to be learned from the Bible, so the powers of our Government are to be known by recurrence to the Constitution. Whatever is not found in those sources is to be rejected as heretical.

With us domestic war is not for conquest but suppression; it is not for the subversion of the Constitution and laws of the rebels but their maintenance, State as well as the Federal. It is simply to preserve the Union, to vindicate the authority of the United States, to save from destruction our entire system of government, Federal and State, to compel obedience and put things in the same order they were, that the Constitution authorizes the interposition of military power. That the success of this power should break up the relations of the rebel States with the United States, and dissolve their governments which it had prevented the rebels from effecting, is a monstrous solecism.

The statesmen who formed the Constitution founded it upon the States, and one of their cardinal objects was to preserve them. They were guilty of no such folly as providing for their dissolution or the forfeiture of any of their rights or powers, or punitive consequences to them in any form or for any cause. All the punishment which it authorizes is to be visited upon persons, individuals; and they who "levy war against the United States, or adhere to their enemies, giving them aid and comfort," commit treason and are subject to be punished as traitors, whether they act under the authority of the State governments or irrespective of them. The Constitution makes no classes or discriminations among those who thus make war against the United States. The highest and only allegiance of every citizen is due to the United States as to all matters intrusted by the Constitution to the General Government; as to all reserved to the States; his highest and only allegiance is due to his State. All allegiance is divided between the General and State Governments; and either has no rightful claim to a particle of what belongs to the other from any citizen.

All men in arms against the United States may be met and opposed by its armies, and in the conflict may be rightfully shot down. This is not war in the sense in which this term is used in the Constitution. But in every contest of arms, in every operation of the armies, both sides are bound to the strictest observance of all the humane laws and usages adopted by Christian nations to mitigate the horrors of war. Until the revolution be consummated by success neither party has any belligerent rights. There is no sovereignty lost, there are no governments dissolved or forfeited, or laws abrogated; there is no territory acquired by conquest; there are no titles or rights to property destroyed or permanently changed. As armies move from places their power and military rights go with them, and civil law and the state of things *ante occupationem militare* are reproduced spontaneously. All captives and other persons who have committed treason are subject to trial and punishment, but by the civil courts, and with all the rights and in the mode prescribed by the Constitution, and liable to no other pains, penalties, or punishment than have been previously declared by law. This is American liberty and when the question comes to me, which will you take, the Union of the States without the liberty, or the liberty without the Union, and I must accept the one or the other, I answer, give me the liberty and let the Union perish! But I have a hope that both may yet be saved.

Mr. President, it seems plain to my mind that the majority have become utterly regardless of the good, present

and future, of the country, and have determined to sacrifice its institutions and liberties in their desperate struggle to continue themselves in power. I will not estimate the large amount of both which they trampled down in the Freedmen's Bureau and civil rights bill, and other measures of legislation. I will not stop to consider

the numerous other amendments of the Constitution which have been proposed in the two Houses, but will proceed to the examination of the one now before the Senate.

This proposition is in the form of a joint resolution proposing to amend the Constitution by adding another article consisting of five sections) and has been passed by' the House and sent to the Senate for its action. I will read it:

ARTICLE —.

Section 1. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sec. 2. Representatives shall be apportioned among, the several States, which may be included in this Union, according to their respective number, counting the whole number of persons in each State excluding Indians not taxed. But whenever in any State the elective franchise shall be denied to any portion of its male citizens not less than twenty-one years of age, or in any way abridged, except for participation in rebellion or other crime, the basis of representation in such State shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens not less than twenty-one years of age.

Sec. 3. Until the 4th day of July, in the year 1870, all persons who voluntarily adhered to the late insurrection giving it aid and comfort, shall be excluded from the right to vote for Representatives in Congress and for electors for President and Vice President of the United States.

Sec. 4. Neither the United States nor any State shall assume or pay any debt or obligation already incurred, or which may hereafter be incurred, in aid of insurrection or of war against the United States, or any claim for compensation for loss of involuntary service or labor.

Sec. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

The first objection I make to the measure is that each of the five sections relates to a different subject, and yet all are submitted as a single proposition. The people might wish to vote for some of them and against others; and they should be presented in such form as to give an opportunity to vote separately on each. But for some object that right has been withheld, and they required to vote for all or against all of them together.

Secondly, no considerable portion of the people have manifested any desire to have these changes made in the Constitution. This proposition has originated with partisan leaders, not to improve the fundamental law of our Government, but as a strategic movement in party politics. It is the right of the people that these proposed changes should be submitted to them, but it was predetermined that this should not be done, because those very leaders knew that they would be rejected. If they had intended to deal fairly by the people in so grave a matter, the resolution would have required the proposed changes to be submitted to conventions, to be chosen for the purpose of considering them, or to their Legislatures, to be elected next after its passage. This course would not have delayed the action of any State twelve months, and the most of them not six months; and there was no occasion for such great haste in the important business of determining whether so important an innovation of the Constitution should be made. But the present Legislatures of all the States not involved in the rebellion had been elected, and in the old free States as long back as eighteen months. In these latter States the Legislatures are known to be intensely radical and to be willing to do blindly the bidding of their leaders in Congress. They were elected before the rebels had submitted and in the very acme of the war excitement, before there was any presentation or public discussion of these proposed changes of the Constitution or of the principles involved in them; and they are not fair representatives of the people of their respective States on the question of the merits of this proposition. But the considerations which render it improper for those Legislatures to decide this great matter determined the radicals in Congress to submit it to them and them only.

But the Senate has amended the first section of the proposed amendment, and it now reads:

All persons born in the United States and subject to the jurisdiction are citizens of the United States and of the States wherein they reside. No State shall make or enforce any law which shall abridge the

privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

The real and only object of the first provision of this section, which the Senate has added to it, is to make negroes citizens, to prop the civil rights bill, and give them a more plausible, if not a valid, claim to its provisions, and to press them forward to a full community of civil and political rights with the white race, for which its authors are struggling and mean to continue to struggle. Except for the negro there is no occasion for it, as all persons of every other race born in the United States, and subject to their jurisdiction, by the operation and effect of the Constitution are citizens. This principle has never been controverted.

The next provision of this section, "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States" is unnecessary, because that matter is provided for in article four, section two, of the Constitution: "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." This provision comprehends the same principle in better and broader language. The next branch, "nor shall any State deprive any person of life, liberty, or property without due process of law," is objectionable, because in relation to her own citizens it belongs to each State exclusively, as being of her own reserved sovereignty and rights, to regulate that matter. It is also unnecessary, because every State constitution contains such a provision, and the rights which it is intended to secure are regarded by all as a most important portion of American liberty, and there is no danger of the removal of the defenses which the States have thrown around them. To the remaining branch, which is, "nor deny to any person within its jurisdiction the equal protection of the laws," each of these objections apply with equal and conclusive force.

The second section, which purports to establish the basis of representation in Congress, is couched in language that is carefully ambiguous, and was evidently intended to obscure its meaning. It begins by adopting the American idea that representation among the States should be apportioned according to their numbers or population; but provides that when-ever in any State—

The elective franchise shall not be denied to any portion of its male citizens not less than twenty-one years of age, or in any way abridged, except for participation in rebellion or other crime, the basis of representation in such State shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizen not less than twenty-one years of age.

The provisions of the Constitution should be clear and concise, and irrespective of the viciousness of the principle this proposition should be rejected for uncertainty and prolixity. Its true meaning was intended to be difficult to be reached, but when understood it is a measure which shrinks from the responsibility of openly forcing negro suffrage upon the late slave States, but attempts by a great penalty to coerce them to accept it. The radical majority well know the deep if not unalterable opposition of the white race in those States to negroes voting, and that by their constitutions and laws that right is withheld from the whole race. In the late free States the negro population is so small that whether they vote or not is a matter of no political consequence, and could, if allowed, take place to such a very limited extent as would not excite a general or intense opposition among the white population. I will give a table of the aggregate numbers of both the white and negro races in some of the States according to the census of 1860:

	Whites.	Blacks.
South Carolina.....	291,358	412,320
Wisconsin.....	774,719	1,171
Mississippi	353,901	437,403
New Hampshire	284,036	528
Georgia	591,598	462,198
Vermont	314,389	709
Alabama	526,431	435,080
Iowa.....	673,884	1,004
Virginia.....	1,047,410	547,507
Massachusetts.....	1,221,464	9,062
Tennessee.....	826,782	282,019
Indiana.....	1,339,000	11,428
Kentucky.....	919,517	236,157
Illinois.....	1,704,323	7,628
North Carolina.....	631,130	261,681

Is any one so green as to believe that, if the condition of the old free States and of the lately slave States named in this list was reversed, as to white and black population, that a single one of the free States would now be advocating negro suffrage? If he would have the vestige of a doubt upon that question, and would only remember that but five of them, notwithstanding the small minimum of negro population of each, have allowed suffrage to negroes, he would doubt no longer.

According to the tables of 1860 there are, in the old free States, of the black race a total of 215,962, while in the late slave States there are 4,214,300. The former, if inhabiting one locality, would be less than the ratio for two Representatives, but the fraction would be large enough to secure two; while the latter would furnish the ratio for thirty-three Representatives, and have a fraction over; but the negro population in the free States is so small in the aggregate and is scattered so sparsely over twenty States as not to be available for a particle of political power. In those States it never did control a single local election, and a combination of circumstances is very improbable that ever will enable it to be felt in any election. It is of no importance, practically, in them whether or not the negroes vote. In the slave States this matter is widely different. In two of them the negro population preponderates largely over the white. In several others their relative strength is less disproportionate than what has long existed between the free and the slave States, in the aggregate; and in all it is large enough to be a formidable element of political power, and is sufficiently concentrated, locally, to be available and effective. The natural antagonism between the two races is irrepressible, and an equality of rights and power between them, without interminable strife, is impossible. One or the other must have the mastery. The God of nature has given it to the white man, and he has asserted it from the beginning and will to the end. This effort of people who have no negroes living among them to force other people, with whom they dwell in such formidable numbers, to concede to them equality of civil and political rights, whether successful or not, will have no other result than to aggravate the war between the races in the southern States, and is made only to get the control of the negro there to make him the instrument to subserve the most selfish and sinister purposes.

The position that this provision is intended to strengthen the sectional radical party at the expense of the southern States, by coercing theirs to bestow suffrage upon the negro, or withholding from them all representation upon that population, is as certain as though it was so expressed in the plainest language. Population is first made the basis of representation, which comprehends all residents, whites, negroes, mulattoes, and foreigners, whether naturalized or not; and having made all negroes citizens, and they not being allowed to vote in any of the late slave States, in them the basis of representation is to be reduced in the proportion in which the male negroes over twenty-one years of age resident in them bear to the aggregate number of their white citizens and those negroes added together. In plain and honest language this provision would read: "Representatives shall be apportioned among the several States according to their respective numbers; but the negro population, in the States where it is not allowed the right of suffrage, shall be deducted so long as it is withheld from them; and when that right is conceded to its negro population in any State it shall be estimated with its other population in apportioning Representatives." This is the behest of the radicals to the late slave States, "Confer upon your negro population the right of suffrage to augment our power and for our benefit, and unless you do this we will reduce your representation in Congress and your presidential electors in proportion to the number of that population."

There is the pretext of a justification for thus reducing the power of the slave States about in this form: they made the rebellion and ought not to have their crime rewarded by having the unrepresented portion of their late slaves as an additional element of political power. But to this it might be responded, "The people of the slave States did not alone make the rebellion; the free States and their people helped it along most effectively. Whatever crime they committed in that affair they have suffered for it grievously in other respects besides the emancipation of all their slaves. The manner of their humiliation and punishment is enough to satisfy every claim of justice and sound policy, without stripping from them an important portion of their constitutional power in the Government. They have already accepted what was not demanded by justice or policy, and as much as true manhood can bear." But the hollowness of this pretext was exhibited partially by the radical majority voting down the proposition of the Senator from Indiana, [Mr. Hendricks,] that three fifths of the negro population should be computed in the apportionment of representation.

Next to population, Mr. President, the most just and proper basis of representation would be voters. This principle has many friends in Congress, and has been earnestly advocated by some of them. But it does not suit New England, because there the female population preponderates considerably over the male, and the adoption of that principle of representation would curtail the representation in Congress of those States two or three; and with characteristic address, her men in the two Houses have caused that proposition to be put on the shelf. Whoever

else may lose, New England always wins.

The third section, proposing to punish "all persons who voluntarily adhered to the late insurrection, giving it aid and comfort," by forfeiting their right to vote for Representatives in Congress and electors for President and Vice President at the next election, has been stricken out by the unanimous vote of the Senate. An amendment of the Constitution that was intended and that could have no other effect than to enable the radical party to carry the next congressional and presidential elections, and which, when they were over, was to expire by its own limitation, was too absurd to receive the support of a majority of the radicals of the Senate, notwithstanding it had been passed by their friends of the House. "King Caucus" required that it should be expunged, and every radical obeyed the command of the king. But they introduce in its stead another section, not so ridiculous, but in substance and import more objectionable. I will read it:

Sec. 3. That no person shall be a Senator or Representative in Congress or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two thirds of each House, remove such disability.

This new section is subject to a number of very grave objections; I will proceed to state some of them. It is in the nature of both a bill of attainder and an *ex post facto* law. Our highest courts have decided that all laws which declare a person to be guilty of a felony, or which make a forfeiture of personal or property rights, are in the nature of bills of attainder. The same authority has also ruled many times over that all laws which make any act penal that was not so at the time of its commission, or which changes, increases, or adds another punishment than what had been provided for crimes before they were committed, are *ex post facto* laws; and they have adjudged all laws of both those classes to be void and of no effect, because they are in contravention of the clause of the Constitution which says, "No bill of attainder or *ex post facto* law shall be passed." It is the incorporation of a criminal judgment against a multitude and an *ex post facto* law in the Constitution.

It is also unconstitutional, because it violates the fundamental principle of our Government, so clearly and well stated in the fourth resolution of the Chicago convention which nominated Mr. Lincoln for the Presidency, that each State has the exclusive right "to order and control its own domestic institutions." This amendment, in providing a punishment for certain officers of the States for an imputed violation of their oaths to support the Constitution of the United States, conflicts with that principle. And it is unconstitutional because it disregards the partition of the powers of the General Government into legislative, executive, and judicial, and the assignment of the first to Congress, the second to the President, and the third to the courts. In the matters I have stated, the proposed amendment violates the Constitution, and makes another continuing breach of it in the clause, "Congress may, by a vote of two thirds of each House, remove such disability;" the whole pardoning power of the Government being of an executive nature and vested in the President.

My proposition, that the proposed alterations of the Constitution because of their confliction with it, if even adopted according to the form of amending it, would be void, may seem a solecism and unsound. I propose to examine that point. The mode of making alterations of the Constitution is provided for in these words:

"The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two thirds of the several States, shall call a convention for proposing amendments, which in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress."

The power of Congress in the premises is special and limited, the whole extent of it being to propose amendments to the Constitution by the action of two thirds of both Houses. The States and the people have no more important reserved rights than that such propositions shall be made by no less a majority than two thirds of both Houses; and that under the guise of amendments, propositions which would subvert or revolutionize or change the essential nature of the Constitution and Government cannot be made. The true and legitimate meaning of the word "amendment" is "alteration for the better," "reformation." Without insisting that proposed amendments of the Constitution should be such as would make it better, or reform it in some feature, it is certainly true that a proposition to make the President a hereditary monarch, Senators to continue in office for life, and members of the House for seven years, could not be legitimately made under this power to propose

amendments; nor could a proposition to break up and dissolve the States and their governments, and to organize the United States into one consolidated Government. No proposition which would be in palpable conflict with and that would certainly operate to change the essential nature and character of the Government formed by the Constitution, or to subvert some of its great and distinguishing principles, could be made by Congress to the States under a power to propose amendments. The framers of the Constitution did not intend to invest, and have not in fact conferred on Congress the power to initiate alterations of it which would revolutionize the Government formed by it. Therefore, all such propositions to change the Constitution, even if made by two thirds of both Houses of a full Congress, and ratified by three fourths of the States, being outside of the pale of their authority, would not become parts of the Constitution, and would have no validity whatever. If they were acquiesced in and took effect, a revolution, bloodless, but nevertheless a revolution, would have ensued.

Mr. President, I have already attempted, and I think successfully, to show that Congress, as the two Houses are now organized, being mutilated by the exclusion of the Senators and Representatives from eleven States by the arbitrary acts of the members who assume to be the two Houses; for the absence of the requisite majority of two thirds thus produced could not propose even proper and legitimate amendments to the Constitution. But the pending proposition, which assaults so many of its cardinal and vital principles that it would inaugurate a great change in the very order and nature of our Government, being initiated by this fragmentary Congress, acting as a revolutionary assembly; it requires extraordinary boldness to maintain that such a proposition made by two thirds of such a Congress, even if ratified by the Legislatures of three fourths of the States, would have any validity. The entire polity of the United States forms the most complex political system that ever existed, consisting of State governments and General Government, States and United States, and all sovereignty divided between them. The States were first each a sovereignty having its own separate government, and possessed of liberty; and they had formed a league for the purposes of common defense and security against foreign aggression. Experience had proved that the States had conflicting interests which caused antagonistical laws and regulations, and must end in mutual collisions and wars; and that their league was wholly insufficient to secure the ends for which it had been formed. The Constitution was designed to supply these needs, and created a nation and a national Government strong enough to give security against foreign attacks and internal disorders without endangering the liberties of the people. The General Government was conceived by and organized upon the States, and to protect and perpetuate them was one of its chief objects. They delegated to it only such powers as were necessary and proper to enable it to manage and control the general affairs intrusted to it. All other powers, except a few withheld both from it and the State governments, were reserved to the States respectively and to the people.

The division and allotment of political sovereignty and the adjustment of the relations between the United States and the States was a work of the greatest importance and difficulty, and taxed to the utmost all the resources of as great men as the world has ever produced, whose minds were enriched by deep reading in the political history of ancient and modern times, by having had free and self-governed communities as their common inheritance, by many years of thorough mental culture and ripe experience in public affairs, and a patriotism as pure and lofty as ever graced any heroic age. Such men were the founders of our Government, and they created and organized it and made its law by a written Constitution. That Constitution is the gathered wisdom of all previous political experience and statesmanship, and has until this degenerate day commanded the confidence and veneration of the people of the United States, and instructed the minds and inspired the hopes of every informed lover of liberty throughout the world. The intelligence and virtue of the people give to it the principle of life; thus sustained by them, it would make their liberties and happiness perpetual; that withdrawn, it becomes a lifeless, soulless Utopian creation.

Shades of Washington, Hamilton, and Madison! how does the eagerness of threescore ignorant, selfish, frenzied demagogues in one Congress, each with a proposition to mar, deform, disadjust, and disorganize your great and harmonious work with their vicious and revolting crudities impress you? What are your hopes of the future of our country? Mr. President, Montesquieu, Blackstone, and all our own great jurists have written that the concentration of the legislative, executive, and judicial powers of Government in one man or body of men makes a perfect despotism. Certainly the radical majority in the two Houses have made persevering and audacious efforts to concentrate in Congress a large amount of those powers. All free Governments should make every effort to avoid war, and especially civil war, because all wars are unfriendly and civil wars are often fatal to popular liberty. The powers of a Government are unavoidably augmented and energized during war, and then there is generally an accord between the legislative and executive branches, produced by the active presence of a common danger and a mutual effort to avert it, that makes the chief executive officer the instrument to give effect to their common policy and purposes. Power is the great corrupter of man, and the engrossment of so much of it in the

executive in time of war as is inevitable, or as an ambitious and able man can so easily grasp, often causes him to form projects destructive of popular rights. Then the most danger to them is to be apprehended from the executive, and it should be the most attentively watched by the people.

But it is not so in the United States when peace has returned. Generally men clothed with power desire to increase it, and between those to whom it is parted out in the same Government there is a disposition to encroach on each other and absorb more than belongs to them. When they are not harmonized by resisting some common attack, this rivalry always exists, and a state of peace develops it, and often to an extent to produce serious disorder in the Government. From the nature and organization of the legislative branch its force is more efficient than that of the others; it feels this superiority, and is consequently most prone, not only to impinge upon them, but to grasp powers which the people have not confided to their Government.

I will read from the Federalist several passages bearing on this point. In No. 48, which treats of the division of the powers of Government into departments, and which was written by Mr. Madison, are these passages:

"It is agreed on all sides that the powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments. It is equally evident that neither of them ought to possess, directly or indirectly, an overruling influence over the others in the administration of their respective powers. It will not be denied that power is of an encroaching nature and it ought to be effectually restrained from passing the limits assigned to it.

"Will it be sufficient to mark with precision the boundaries of those departments in the constitution of the Government and trust to these parchment barriers against the encroaching spirit of power. But experience assures us that the efficacy of the provision has been greatly overrated; and that some more adequate defense is indispensably necessary for the more feeble against the more powerful members of the Government. The legislative department is everywhere extending the sphere of its activity and drawing all power into its impetuous vortex.

"The founders of our Republic have so much merit for the wisdom which they have displayed that no task can be less pleasing than that of pointing out the errors into which they have fallen. A respect for truth, however, obliges us to remark that they seem never for a moment to have turned their eyes from the danger to liberty from the overgrown and all-grasping prerogative of an hereditary magistrate, supported and fortified by an hereditary branch of the legislative authority. They seem never to have recollected the danger from legislative usurpations, which, by assembling all power in the same hands, must lead to the same tyranny as is threatened by executive usurpations.

"In a Government where numerous and extensive prerogatives are placed in the hands of an hereditary monarch the executive department is very justly regarded as the source of danger, and watched with all the jealousy which a zeal for liberty ought to inspire. In a democracy, where a multitude of people exercise the legislative functions, and are continually exposed, by their incapacity for regular deliberation and concerted measures, to the ambitious intrigues of their executive magistrates, tyranny may well be apprehended, in some favorable emergency, to start up in the same quarter. But in a representative republic, where the executive magistracy is carefully limited, both in the extent and duration of its power, and where the legislative power is exercised by an Assembly which is inspired by a supposed influence over the people, with an intrepid confidence in its own strength, which is sufficiently numerous to feel all the passions which actuate a multitude, and yet not so numerous as to be incapable of pursuing the objects of its passions by means which reason prescribes, it is against the enterprising ambition of this department that the people ought to indulge all their jealousies and exhaust all their precautions.

"The legislative department derives a superiority in our Government from other circumstances. Its constitutional powers being at once more extensive and less susceptible of precise limits, it can with greater facility mask under complicated and indirect measures the encroachments which it makes on the coordinate departments. It is not unfrequently a question of real nicety in legislative bodies whether the operation of a particular measure will or will not extend beyond the legislative sphere. On the other side, the executive power being restrained within a narrower compass, and being more simple in its nature, and the judiciary being described by landmarks still less uncertain, projects of usurpation by either of these departments would immediately betray and defeat themselves. Nor is this all; as the legislative department alone has access to the pockets of the people, and has in some constitutions full discretion, and in all prevailing influence over the pecuniary rewards of those who fill the other departments, a dependence is thus created in the latter which gives still greater facility to encroachments of the former."

This remarkable paper shows how thoroughly the writer had considered the Constitution and his perfect comprehension of the mode in which the Government it proposed to organize would work. With the benefit of observation and experience to this day he could not have depicted more forcibly and truly the aggressions of Congress upon the other departments, and particularly the executive; and with what confidence and audacity it is assailing the great principles of the Constitution, without which popular liberty cannot be preserved.

Mr. President, in our country loyalty is not fidelity to a King or a President or Congress, or to the men who administer the Government, but to the Constitution. It requires the proper support of the Government of the United States and of the States and their governments, for they are parts of the system which the Constitution has built up, and it throws its aegis equally over them. Its claim upon every citizen is to sustain every officer of the Government in the constitutional and legal discharge of his duties, and to oppose him in every departure from that rule, and above all to repel every aggression upon the Constitution.

But, Mr. President, since the insurrection broke out, the position that the States have no sovereignty has been often and boldly assumed, both in and out of the Senate. It is indeed coming to be believed that the States are creations of the Federal Constitution, that they exist in complete subordination to and by the sufferance of the Government of the United States. I think it is time that this dangerous and growing heresy should be corrected, and I will produce ample authority to refute it.

The tenth amendment to the Constitution is of itself sufficient to settle this question:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Full and complete sovereignty comprehends every political power, so that when there is a partition and division of political powers between two Governments, the political sovereignty is divided between them. All legislative, executive, and judicial powers are parts of the aggregate of political sovereignty; and for a definite and correct conception of the extent of this political sovereignty that the Constitution confers upon the United States, and that is retained under it by the States, I will read from No. 33 of the Federalist, written by Hamilton:

"If a number of political societies enter into a larger political society, the laws which the latter may enact pursuant to the powers intrusted to it by its constitution must necessarily be supreme over those societies and the individuals of whom they are composed. It would otherwise be a mere treaty, dependent on the good faith of the parties, and not a government; which is only another word for political power and supremacy. But it will not follow from this doctrine that acts of the larger society, which are not pursuant to its constitutional powers, but which are invasions of the residuary authorities of the smaller societies, will become the supreme law of the land. These will be merely acts of usurpation and will deserve to be treated as such."

Mr. Madison, in No. 52, when treating of the Senate, says:

"In the spirit, it may be remarked that the equal vote allowed to each State, is at once a constitutional recognition of the portion of sovereignty remaining in the individual States, and an instrument for preserving that residuary sovereignty. So far the equality ought to be no less acceptable to the large than the small States; since they are not less solicitous to guard, by every possible expedient, against an improper consolidation of the States into one simple republic."

"Another advantage accruing from this ingredient of the Senate is the additional impediment it most prove against improper acts of legislation. No law or resolution can now be passed without the concurrence, first, of a majority of the people, and then of a majority of the States."

This authority is not only directly in favor of the reserved State sovereignty and rights, but also impliedly, yet strongly, in its position that a majority of the whole number of the members of each House is necessary to pass laws and resolutions; a majority of the people and the States could not be represented by a less number of the two Houses.

Hamilton, in No. 17 of the Federalist, page 76, says:

"Commerce, finance, negotiation, and war, seem to comprehend all the objects which have charms for minds governed by that passion, ambition; and all the powers necessary to these objects ought, in the first instance, to be lodged in the national depository. The administration of private justice between citizens of the same State, the supervision of agriculture, and of other concerns of a similar nature; all those things, in short, which are proper to be provided for by local legislation, can never be desirable cares of a general jurisdiction. It is therefore improbable that there should exist a disposition in the Federal councils to usurp the powers with which they are connected," &c.

On page 77 the same writer says:

"There is one transcendent advantage belonging to the province of the State governments which alone suffices to place the matter in a clear and satisfactory light: I mean the ordinary administration of criminal and civil justice. This, of all others, is the most powerful, the most universal, and most attractive source of popular obedience and attachment. It is this which, being the immediate and visible guardian of life and property, having its benefits and its terrors in constant activity before the public eye, regulating all those personal interests and familiar concerns to which the sensibilities of individuals are more immediately awake, contributes, more than any other circumstance, to impress upon the minds of the people affection, esteem, and reverence toward the Government. This great cement of society, which will diffuse itself almost wholly through the channels of the State governments, independent of all other causes or influence, would insure them so decided an empire over their respective citizens as to render them at all times a complete counterpoise, and not unfrequently dangerous rivals to the power of the Union."

Again, Hamilton, in No. 23 of the Federalist, page 104, says, speaking of the powers proposed to be conferred on the Government of the United States by the Constitution:

"The principal purposes to be answered by union are these: the common defense of the members; the preservation of the public peace, as well against internal convulsions as external attacks; the regulation of commerce with other nations and between the States; the superintendence of our intercourse, political and commercial, with foreign countries."

The same, No. 33, on page 144, says:

"If the Federal Government should overpass the just bounds of its authority and make a tyrannical use of its powers, the people, whose creature it is, must appeal to the standard they have formed, and take such measures to redress the injury done to the Constitution as the exigency may suggest and prudence justify. The propriety of a law, in a constitutional light, must always be determined by the nature of the powers upon which it is founded. Suppose that by some forced construction of its authority — which, indeed, cannot easily be imagined — the Federal Legislature should attempt to vary the law of descent in any State, would it not be evident, in making such an attempt, it had exceeded its jurisdiction and infringed upon that of the State? Suppose, again, that upon a pretense of an interference with its revenue, it should undertake to abrogate a land tax imposed by the authority of a State, would not it be equally evident that this was an invasion of that concurrent jurisdiction in respect to this species of tax which the Constitution plainly supposes to exist in the State governments?"

In the same number of the Federalist, page 145, is this passage:

"Though a law, therefore, laying a tax for the use of the United States, would be supreme in its nature, and could not be legally opposed or controlled, yet a law abrogating or preventing the collection of a tax laid by the authority of a State (unless upon imports and exports) would not be the supreme law of the land, but a usurpation of a power not granted by the Constitution."

Mr. Madison wrote No. 39, and on page 178 it says:

"But if the Government be national with regard to the operation of its powers (acting individually and personally on all citizens composing the nation) it changes its aspect again when we contemplate it in relation to the extent of its powers. The idea of a national Government involves in it not only an authority over the individual citizen, but an indefinite supremacy over all persons and things, so far as they are objects of lawful government. Among a people consolidated into one nation this supremacy is completely vested in the national Legislature. Among communities united for particular purposes it is vested partly in the general and partly in the municipal Legislatures. In the former case all local authorities are subordinated to the supreme, and may be controlled, directed, or abolished by it at pleasure. In the latter the local or municipal authorities form distinct and independent parties of the supremacy, no more subject, within their respective spheres, to the general authority than the general authority is subject to those within its own sphere. In this relation, then, the proposed Government cannot be deemed a national one, since its jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects. It is true that in controversies relating to the boundary between the two jurisdictions the tribunal which is ultimately to decide is to be established under the General Government. But this does not change the principle of the case. The decision is to be impartially made according to the rules of the Constitution."

This authority is surely sufficient to refute the position that the States have no sovereignty.

Mr. President, the radicals have a definite policy, which is palpable to the whole country. Its paramount object

is their continuance in office and power, and the chief means, negro suffrage, new States to be formed of Territories having but a modicum of population rotten-borough States — and to exclude the southern States from all participation in the Government as long as practicable, but at all hazards until after the next congressional and presidential elections. Their machinery is a perpetual howl for justice and protection to "the loyal citizens of African descent," Freedmen's Bureau, civil rights bill, negro suffrage to be urged in every form, the members from the southern States to be excluded from Congress, tinkering with the Constitution, all constitutional right that is possible to be withheld from the southern people, and they to be oppressed and harassed in every mode by the omnipresent Freedmen's Bureau, to goad them to speeches, newspaper publications, and acts of indiscretion and violence, for the purpose of having a pretext to continue over them a military and civil regime that outrages every principle of constitutional law, right, and liberty. But this terrible game is about being "played out." Let gentlemen take notice! that it is the deliberate, firm, and unalterable purpose of the American people that every loyal Senator and Representative of the southern States to the next Congress shall be admitted to his seat, and that every southern State shall vote in the next presidential election, and that the candidate who receives a majority of the electoral votes of all the States shall fill that office.

I, sir, am for the maintenance of the inviolability of the Constitution, and the prompt redress and reparation of every infraction of it. I wish the United States and the States each to be in the undisturbed possession and exercise of all the sovereignty and powers which it accords to them, no more no less, and so of every department of the Government. I am the defender of the Government of the United States, of the States, of any department or officer that may be unjustly assailed; and when their position is changed to that of the aggressor, I then become an opponent. On this general principle I have heretofore endeavored to act throughout my humble political career, and in the future I will not swerve from it, come what may to me. I voted against Mr. Johnson because in the then condition of the country I was opposed to his political position; but I am now one of his supporters. By the providence of God, and the Constitution, he has been called to the Presidency; and none of his predecessors were ever surrounded by so many and such stupendous difficulties. But he seems to be the man for the occasion; and his ability, resources, courage, and patriotism have developed to meet its great demands. He is literally "to the best of his ability" striving "to preserve, protect, and defend the Constitution of the United States" against those who would destroy it, the radicals of Congress; and if this ark which holds the rights and liberties of the American people is to be rescued and saved, he will be one of the chief instruments in the great work, and his glory and fame will be deathless.

RECONSTRUCTION.

Mr. STEVENS. I am instructed by the joint committee on reconstruction to report a joint resolution proposing an amendment to the Constitution of the United States.

The joint resolution was read a first and second time. It is as follows :

A joint resolution proposing an amendment to the Constitution of the United States.

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two thirds of both Houses concurring,) That the following article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three fourths of said Legislatures, shall be valid as part of the Constitution, namely:

Article—.

Sec. 1. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sec. 2. Representatives shall be apportioned among the several States which may be included within this Union according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But whenever in any State the elective franchise shall be denied to any portion of its male citizens not less than twenty-one years of age, or in any way abridged, except for participation in rebellion or other crime, the basis of representation in such State shall be reduced in the proportion which the number of male citizens shall bear to the whole number of such male citizens not less than twenty-one years of age.

Sec. 3. Until the 4th day of July, in the year 1870, all persons who voluntarily adhered to the late insurrection, giving it aid and comfort, shall be excluded from the right to vote for Representatives in Congress and for electors for President and Vice President of the United States.

Sec. 4. Neither the United States nor any State shall assume or pay any debtor obligation already incurred, or which may hereafter be incurred, in aid of insurrection or of war against the United States, or any claim for compensation for loss of involuntary service or labor.

Sec. 5. The Congress shall have power to enforce by appropriate legislation the provisions of this article.

Mr. STEVENS. I move that this joint resolution be postponed until Tuesday of next week after the reading of the Journal, and be made the special order for that day, and from day to day until disposed of, and that it be printed.

Mr. NIBLACK. I desire to inquire whether this report of the committee on reconstruction is intended to supersede the special report lately made in reference to the State of Tennessee; or whether that special report is to be first considered and disposed of before this shall be reached.

Mr. STEVENS. This does not supersede that; if the House shall choose, that special report can be taken up at any time. I move that the joint resolution just reported be made the special order for Tuesday of next week after the reading of the Journal, and that it be printed.

Mr. ROSS. I have no objection to this being made the special order at the time indicated, subject to the prior consideration of the tariff and revenue bills, if they come up previously.

The SPEAKER. This must be made a special order or not; it cannot depend upon a contingency.

Mr. ROSS. Then I object.

Mr. STEVENS. I move to suspend the rules for the purpose I have named.

The question was taken; and upon a division there were—ayes [sic] 89, noes 20.

Before the result of the vote was announced,

Mr. ANCONA called for the yeas and nays. The yeas and nays were ordered.

The question was taken; and it was decided in the affirmative—yeas 107, nays 20, not voting 56; as follows:

YEAS—Messrs. Alley, Allison, Ames, Anderson, Delos R. Ashley, Baker, Banks, Baxter, Beaman, Benjamin, Bidwell, Bingham, Blaine, Blow, Boutwell, Brandegee, Bromwell, Buckland, Reader W. Clarke, Sidney Clarke, Cobb, Conkling, Cook, Cullom, Darling, Dawes, Defrees, Delano, Deming, Dodge, Donnelly, Driggs, Eliot, Farnsworth, Ferry, Garfield, Grinnell, Griswold, Abner C. Harding, Henderson, Higby, Volumes, Hotchkiss, Asahel W. Hubbard, Chester D. Hubbard, John H. Hubbard, James R. Hubbell, Hulburd, Ingersoll, Jenckes, Julian, Kelley, Kelso, Kuykendall, Laflin, George V. Lawrence, William Lawrence, Loan, Longyear, Lynch, Marston, Marvin, McClurg, McKee, McRuer, Miller, Moorhead, Morrill, Morris, Moulton, Orth, Paine,

Perham, Phelps, Pike, Plants, William II, Randall, Alexander H. Rice, Rollins, Rousseau, Sawyer, Schenck, Shanklin, Shellabarger, Smith, Spalding, Stevens, Stilwell, Thayer, Francis Thomas, John L. Thomas, Trowbridge, Upson, Burt Van Horn, Ward, Warner, Elihu B. Washburne, Henry D. Washburn, William B. Washburn, Wentworth, Whaley, Williams, James F. Wilson, Stephen F. Wilson, Windom, and Woodbridge—107.

NAYS—Messrs. Ancona, Bergen, Boyer, Coffroth, Dawson, Eldridge, Finck, Glider, Aaron Harding, James M. Humphrey, Latham, Marshall, Niblack, Nicholson, Ritter, Ross, Strouse, Taylor, Thornton, and Winfield—20.

NOT VOTING—Messrs. James M. Ashley, Baldwin, Barker, Broomall, Bundy, Chanter, Culver, Davis, Denison, Dixon, Dumont, Lekley, Eggleston, Farquhar, Glossbrenner, Goodyear, Hale, Harris, Hart, Hayes, Hill, Hogan, Hooper, Demas Hubbard, Edwin N. Hubbell, James Humphrey, Johnson, Jones, Kasson, Kerr, Ketcham, Le Blond, McCullough, McIndoc, Mercur, Myers, Newell, Noell, O'Neill, Patterson, Pomeroy, Price, Radford, Samuel J. Randall, Raymond, John H. Rice, Rogers, Scofield, Sitgreaves, Sloan, Starr, Taber, Trimble, Van Aernam, Robert T. Van Horn, Welker, and Wright—56.

So the motion to suspend the rules was agreed to, two thirds voting in the affirmative.

During the roll-call,

Mr. THAYER said: My colleague, Mr. O'Neill, is detained from the House in consequence of indisposition; he is paired on all political questions with my colleague, Mr. Randall.

Mr. ANCONA said: My colleague, Mr. Johnson, is paired with Mr. Hooper, of Massachusetts.

The result of the vote was announced as above.

The question was taken upon postponing the further consideration of the joint resolution till Tuesday of next week, after the reading of the Journal, and making it the special order for that day, and from day to day until disposed of; and it was agreed to.

The joint resolution was ordered to be printed.

Mr. STEVENS. I am also instructed by the joint committee on reconstruction to report a bill to provide for restoring the States lately in insurrection to their full political rights.

The bill was read a first and second time. It is as follows:

A bill to provide for restoring the States lately in insurrection to their full political rights.

Whereas it is expedient that the States lately in insurrection should, at the earliest day consistent with the future peace and safety of the Union, be restored to full participation in all political rights; and whereas the Congress did, by joint resolution, propose for ratification to the Legislatures of the several States, as an amendment to the Constitution of the United States, an article in the following words, to wit:

Article—.

Sec. 1. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sec. 2. Representatives shall be apportioned among the several States which may be included within this Union, according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But whenever, in any State, the elective franchise shall be denied to any portion of its male citizens not less than twenty-one years of age, or in any way abridged except for participation in rebellion or other crime, the basis of representation in such State shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens not less than twenty-one years of age.

Sec. 3. Until the 4th day of July, in the year 1870, all persons who voluntarily adhered to the late insurrection, giving it aid and comfort, shall be excluded from the right to vote for Representatives in Congress, and for electors for President and Vice President of the United States.

Sec. 4. Neither the United States nor any State shall assume or pay any debt or obligation already incurred, or which may hereafter be incurred, in aid of insurrection or of war against the United States, or any claim for compensation for loss of involuntary service or labor.

Sec. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Now, therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever the above-recited amendment shall have become part of the Constitution of the United States, and any State lately in insurrection shall have ratified the same, and shall have modified

its constitution and laws in conformity therewith, the Senators and Representatives from such State, if found duly elected and qualified, may, after having taken the required oaths of office, be admitted into Congress as such.

Sec. 2. And be it further enacted, That when any State lately in insurrection shall have ratified the foregoing amendment to the Constitution, any part of the direct tax under the act of August 5, 1861, which may remain due and unpaid in such State may be assumed and paid by such State; and the payment thereof, upon proper assurances from such State to be given to the Secretary of the Treasury of the United States, may be postponed for a period not exceeding ten years from and after the passage of this act.

Mr. STEVENS. I move that the further consideration of this bill be postponed till Wednesday of next week, after the reading of the Journal, and be made the special order for that day, and from day to day until disposed of, and be printed.

Mr. ELDRIDGE. I object.

Mr. STEVENS. I move that the rules be suspended for that purpose.

The question was taken; and two thirds voting in the affirmative, the motion was agreed to.

The bill was accordingly postponed until Wednesday of next week, after the reading of the Journal, and made the special order for that day, and from day to day until disposed of, and was ordered to be printed.

Mr. STEVENS. I am further instructed by

the same committee to report a bill declaring certain persons ineligible to office under the Government of the United States.

The bill was read a first and second time. It is as follows:

A bill declaring certain persons ineligible to office under the Government of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no person shall be eligible to any office under the Government of the United States who is included in any of the following classes, namely:

- 1. The president and vice president of the confederate States of America, so called, and the heads of departments thereof.*
- 2. Those who in other countries acted as agents of the confederate States of America, so called.*
- 3. Heads of Departments of the United States, officers of the Army and Navy of the United States, and all persons educated at the Military or Naval Academy of the United States, judges of the courts of the United States, and members of either House of the Thirty-Sixth Congress of the United States who gave aid or comfort to the late rebellion.*
- 4. Those who acted as officers of the confederate States of America, so called, above the grade of colonel in the army or master in the navy, and any one who, as Governor of either of the so-called confederate States, gave aid or comfort to the rebellion.*
- 5. Those who have treated officers or soldiers or sailors of the Army or Navy of the United States, captured during the late war, otherwise than lawfully as prisoners of war.*

Mr. STEVENS. I move that the further consideration of this bill be postponed until Thursday of next week, after the reading of the Journal, and be made the special order for that day, and from day to day until disposed of, and that it be printed.

Mr. ELDRIDGE. I object.

Mr. STEVENS. I move that the rules be suspended for the purpose of making it a special order for Thursday week next.

Mr. ELDRIDGE demanded the yeas and nays, and tellers on the yeas and nays.

Tellers were not ordered, and the yeas and nays were not ordered.

The rules were then suspended.

The bill was ordered to be printed, and made the special order for Thursday week next, after the morning hour.

Mr. STEVENS. I am directed by the committee to say that it is designed, as soon as the testimony is printed, that a short report will be made by the committee in furtherance of the objects now reported.

RECONSTRUCTION.

Mr. BOUTWELL, by unanimous consent, gave notice that he would propose to amend the "bill to provide for the restoration of the States in insurrection to their full practical rights," by striking out all after the enacting clause and inserting the following:

That whenever the above recited amendment shall have become Part of the Constitution, and Tennessee or Arkansas shall have ratified the same, and shall have modified its constitution and laws in conformity therewith, and shall have established an equal and just system of suffrage for all male citizens within its Jurisdiction, who are not less than twenty-one years of age, tho Senators and Representatives from such State, it found duly elected and qualified, may, after having taken the required oaths of office, be admitted into Congress such: Provided, That nothing in this section contained shall be so construed as to require the disfranchisement of any loyal person who is now entitled to vote.

The proposed amendment was ordered to be printed.

Mr. BINGHAM. I give notice of my intention to offer an amendment which I send to the desk and ask to have printed.

The proposed amendment was accordingly ordered to be printed.

2344

THE CONGRESSIONAL GLOBE

May 2,

RECONSTRUCTION.

Mr. WASHBURNE, of Illinois, from the joint committee on reconstruction, submitted testimony which had been taken before that committee in reference to Texas, Louisiana, and Florida; which was ordered to be printed and laid upon the table.

Mr. WASHBURNE, of Illinois, moved that the same number of extra copies be printed as had been ordered of previous testimony in reference to other States.

The motion, under the law, was referred to the Committee on Printing.

2394

THE CONGRESSIONAL GLOBE

May 5,

RECONSTRUCTION.

Mr. BUNDY. It was my intention to address the House today extemporaneously, but I am entirely too unwell to proceed. I therefore ask to be allowed to print some remarks, in which I will embody the substance of what I would have said.

The SPEAKER. The Chair hears no objection, and leave is granted.

[His remarks will be found in the Appendix.]

Mr. PHELPS. Mr. Speaker, on the 1st of May, 1865 the Union Army numbered one million five hundred and sixteen men. After a struggle, unprecedented in ancient or in modern history, the purpose for which that vast power had been called forth was accomplished. Four years of civil war between people of the same race, of the highest type of modern civilization, and of equal intelligence, courage, and determination, had been waged upon a theater of continental proportions, had employed in its prosecution the most finished and destructive enginery, had in its terrific battles and daily skirmishes cost this generation over half a million lives, and had entailed upon the nation a debt of three thousand and upon the insurgent section a loss of seven thousand million dollars. But remarkable as was this contest in all the elements of material grandeur, it was still more memorable for the importance of the issue involved, and the extraordinary precision with which it was defined. Slavery, struggling for perpetuity, expansion, and power, struck at the existence of the Government, which, in the growth and progress of ideas necessarily came to stand in its path, arrest its advance, and menace its security. Slavery was the cause, and the only cause, of the rebellion. The idea of secession would never have been practically adopted, certainly never enforced by arms, but in defense of that institution. Hence the war policy of the Government necessarily became anti-slavery. Hence, in the fullness of time, came the proclamation of emancipation, the organization and arming of liberated slaves, the immediate and uncompensated abolition of slavery within her limits by the State of Maryland—an offering voluntarily made by that loyal State, as her contribution to the common cause in furtherance of the general policy settled upon as the only one to suppress the rebellion—and following that, the passage by Congress by a two thirds majority of the proposition to be submitted to the several States to abolish slavery throughout the country forever by constitutional amendment.

The policy thus adopted and persevered in by the Government ultimately forced a similar policy of emancipation and enlistment of slaves upon the consideration of the rebel authorities. The instant the confederate

government found itself reduced to that dilemma the scales fell from all eyes. No sooner was it discovered that the thinned ranks of the rebel army, exhausted by four bloody years of incessant combat, and required to face the fresh columns that poured down with endless tramp from the North, could only be recruited from among those very slaves, to rivet whose fetters that army was in fact fighting, than the whole fabric tumbled into ruin. To arm the slaves was of course to free them, and to free the slaves to fight the battles of slavery was simply a *reductio ad absurdum* and a ghastly farce.

In the providence of God, it seems necessary that this most cruel of wars should have been fought to the bitter end upon the "line" which has been indicated: first, to secure from the South the complete, irrevocable, and final surrender of slavery; second, to remove all occasion for hindering the immediate pacification of the country by a desultory guerrilla warfare, so much feared and predicted; and third, to obviate all danger, and thus to extinguish in every candid mind all reasonable fear of a possible future rebellion in the interest of the defeated insurgents.

This generation cannot fully appreciate, but history will recognize the great fact of the abolition of the institution of human slavery. It is too sudden, too violent, and too vast to be fully comprehended today. Not the least among the many great evils of this system was the specific influence it produced over the moral sense, dwarfing and contracting the consciences of men to its narrow standard, just as darkness contracts the physical eye. Bursting suddenly and with great noise and fury into the bright air of freedom, what wonder that we should still see with dazzled and bewildered vision, that we should grope and clutch vaguely at the objects around us, that we should be tormented with panic fears and haunted with hideous dreams of the dark prison-house. It is, therefore, by no means strange to me, but quite natural, that many well-meaning but purblind patriots should still afflict themselves and society with their panic dread of rebellion; should predict the revival or even affirm the actual present existence of slavery; should start at every sound, and stampede at every shadow; should see walking by moonlight the ghost of slavery, and behind every bush a "red-handed rebel;" should rend the air with clamors for protection against this imaginary monster, and make both day and night hideous with their jargon of guarantees, conditions, and constitutional amendments. Nor is it at all surprising that these same purblind patriots, in their blundering frenzy, should strike by mistake their best friends, should attack the Secretary of State, should denounce and threaten the President, and involve in the same censure the sacred memory of his lamented predecessor.

Sir, who is Secretary Seward, that he should be hawked at and torn, not now by the knife of the traitor assassin striking slavery's last blow at its greatest human antagonist, but this time by the loud and blatant champions of loyalty? I remember him well, with his "higher law" and his "irrepressible conflict," the scarred and reenlisted veteran in this great war of liberty; and I recollect him as he stood in the Senate many years ago, when men who now revile him as recreant and denounce him as a rebel sympathizer, then scoffed at him as an abolition fanatic, as he stood at the head of a corporal's guard gallantly attacking slavery in its stronghold. Sir, it may be said of him that while Phillips and Garrison and the other humbugs of both sexes were fighting valiantly in the rear, William H. Seward was at the front, leading not the advanced guard, but the skirmish line of freedom right up to the breastworks. With Henry Ward Beecher, he has devoted all the best years of his life to the destruction of human slavery. He struck at it whenever it lifted one of its hydra heads; he has put the searing iron, hissing hot, to the last of them; he felt anxiously and skillfully for the last pulsation of the dying monster's heart; he has pronounced it dead, and he who feared it not when living and terrible is not scared at its carrion. He belongs to a more vigorous and a more practical school of statesmen. He takes this view of the case, and all sensible men of firm nerves, clear eye-sight, and good digestion, agree with him, or soon will. The South was formerly possessed of the devil, in the scripture sense, and dwelt among the tombs. While this unclean spirit was present, there was much foaming and gnashing. It was finally exorcised, and as it came rending its way from out its tormented and bleeding victim, it howled out its name, not as legion, but slavery. It became incarnate in the person of Booth, and astonished and appalled mankind by the supreme horror and last convulsion of demoniac madness, before it died the death of a dog.

Now, there are those who would scourge and manacle and cuff and curse the rescued, regenerated, and emancipated South, even before her wounds are stanchd from this frightful, this worse than Cesarean operation. Beecher and Seward are of a different school of philanthropists. They see the one but lately possessed of the unclean spirit and gnashing among the tombs, now sitting, clothed, and in his right mind. They do not look for uniform amiability, nor do they require the patient immediately, and while smarting with pain, to express profound satisfaction and intense delight with the process, nor unfeigned personal love and gratitude toward those who performed it. On the contrary, it is fair to presume that those men of honor would abandon the unhappy victim to the tormentors should it exhibit so craven a spirit and so contemptible a hypocrisy. Nor is it deemed

indispensably necessary that men, otherwise loyal, should profess now to hold the doctrines which

they have endeavored to maintain by the sword as false and heretical *ab initio*. For forty years and more they have been educated to believe the false and dangerous heresy which bore them the bitter fruits they reaped from the attempt at rebellion. It would be unreasonable to require, as it would be impossible to expect, that these people should all of a sudden sincerely and honestly believe that the principle for which they contended was false, because those who professed it have been routed upon the field. What we require and have a right to require of them is that they abandon that doctrine as a principle of action for the future. We have lost too many of our people in this war, we have shed too much blood and lost too much property and spent too much money to be altogether indifferent about the legitimate fruits of our dearly bought victory. We fought for Union, for the integrity, the immortality of our Government, and by the help of God we have conquered. We owe it to ourselves and to posterity to assure the one and the other against danger in the future. We therefore demand a searching, adequate, and irreversible guarantee of future practical loyalty. That demand is the sum and substance of the Administration policy, which it has lately become the fashion to scoff at.

Here is the "policy" in the exact language of President Johnson. I quote from his annual message to Congress, of the 4th December, 1865, a state paper that for clearness, terseness, cogency, and elegance has never been surpassed, and that for broad and catholic statesmanship and heroic intrepidity has taken the world by surprise:

"It is not too much to ask, in the name of the whole people, that on the one side the plan of restoration shall proceed in conformity with a willingness to cast the disorders of the past into oblivion; and that on the other the evidence of sincerity in the future maintenance of the Union shall be put beyond any doubt by the ratification of the proposed amendment to the Constitution, which provides for the abolition of slavery forever within the limits of our country."

"The adoption of the amendment reunites us beyond all power of disruption. It heals the wound that is still imperfectly closed; it removes slavery, the element which has so long perplexed and divided the country; it makes of us once more a united people, renewed and strengthened, bound more than ever to mutual affection and support."

And again:

"As no State can throw a defense over the crime of treason, the power of pardon is exclusively vested in the executive government of the United States. In exercising that power I have taken every precaution to connect it with the clearest recognition of the binding force of the laws of the United States, and an unqualified acknowledgment of the great social change of condition in regard to slavery which has grown out of the war."

The same plan of restoration was embodied by President Lincoln in his famous proclamation of July 18, 1864:

To whom it may concern :

*Any proposition which embraces the restoration of peace, the integrity of the whole Union, and the abandonment of slavery, * * * * will be received and considered by the executive government of the United States, and will be met by liberal terms on other substantial and collateral points.*

To secure the definite, unequivocal, and irrevocable surrender of slavery, the one only cause of rebellion, the one solitary root of disloyalty, to secure it by the voluntary surrender of the insurgents themselves, and to secure it by their legislative ratification of the constitutional amendment, acting upon it as States; as States of and States in the Union; as States of and in the Union under the Constitution; not only so, but as States of the Union above the Constitution by actually exercising the supreme State prerogative of amendment, by in fact, sharing the State omnipotence of organic creation; this, then, was the aim and end of the Administration policy, this was the practical restoration of the Union.

Contrasts are sometimes more useful for purposes of illustration than analogies. The stars are not visible until the blackness of night devours the light of day. With this view let us hear the bold and outspoken leader of the House, speaking, as he frankly admits, upon his own responsibility; but speaking, as he claims, with equal candor, "so as to secure perpetual ascendancy to the party of the Union," or, as he otherwise phrases it, to "continue the Republican ascendancy."

"Two things are of vital importance"—

I am quoting the distinguished gentleman from Pennsylvania, [Mr. Stevens]—

"so to establish a principle that none of the rebel States shall be counted in any of the amendments of

the Constitution until they are duly admitted into the family of States by the law-making power of their conqueror. For more than six months the amendment of the Constitution abolishing slavery has been ratified by the Legislatures of three fourths of the States that acted on its passage by Congress, and which had Legislatures, or which were States capable of acting, or required to act, on the question.

"I take no account of the aggregation of white-washed rebels who without any legal authority have assembled in the capitals of the late rebel States and simulated legislative bodies."

The reference is to the Legislatures elected in the several States by virtue originally of proclamations emanating from provisional governors appointed by the President; all the electors and members being required to take the prescribed amnesty oath of allegiance to the Government, and acquiescence in martial emancipation.

To proceed:

"Nor do I regard with any respect the cunning by-play with which they deluded the Secretary of State by frequent telegraphic announcements that 'South Carolina had adopted the amendment;' 'Alabama has adopted the amendment, being the twenty-seventh State,' &c. This was intended to delude the people, and accustom Congress to hear repeated the names of these extinct States as if they were alive, when, in truth, they have now no more existence than the revolted cities of Latium, two thirds of whose people were colonized and their property confiscated and their right of citizenship withdrawn by conquering and avenging Rome."

Here we have outlined with the freedom and boldness of a master hand the framework of a plan which was at a very early day of the session (December 18) proposed for the consideration and adoption of Congress. This plan had for its basis the theory of "defunct," "dead," or "extinct States," or if that were adjudged impossible or absurd, then they were to be called "States out of the Union and now conquered Territories." In either case, that is, whether on the one hand they are "not out of the Union but only dead carcasses lying within the Union," or whether on the other hand "they are and for four years have been out of the Union for all legal purposes"—in either of these hypotheses the logical sequence resulted that "being now conquered they are subject to the absolute disposal of Congress."

This programme then goes on to dispose of them as subjugated foreign provinces, to manacle their outlawed people, and hold them indefinitely as the mere slaves of Congress; to force them "to mingle with those to whom Congress shall extend the right of suffrage," and in that condition, excluded from representation, though subject to taxation, governed and disciplined by imported agents and commissioners, dragooned, court-martialed, and plundered, they are to be kept" for some years "to eat the fruit of foul rebellion." Should this training fail to develop a spirit of earnest and sincere loyalty; should the advantages of this school, in which with exquisite and inimitable humor it is declared that they are to learn the principles of freedom, "practice justice to all men," and "accustom themselves to make and to obey equal laws" appear to have been thrown away upon ingrates unable to appreciate and unwilling to profit by them, does the programme on that account fail? Not at all. It has but just begun to succeed. The remedy for obstinate disloyalty is at hand. Permanent, incurable disaffection may read its fate very plainly in that of "the revolted cities of Latium, two thirds of whose people were colonized and their property confiscated and their right of citizenship withdrawn by conquering and avenging Rome."

As a speculation upon disloyalty, this policy could not possibly be improved. If general confiscation of property, under pretext, is what is wanted, no surer road to it can be found. It is a process which, if put in operation upon a community whose loyalty was immaculate, would speedily convert it into a community of rebels. Why, sir, I believe that the spirited people of my own native State of Vermont, teased by so tormenting a tyranny, would indignantly revolt and turn upon their oppressors at every hazard and against all odds. If they did not, they would not prove their legitimate descent from those gallant men of 1781, upon whom Ethan Allen relied in his demand on behalf of the self-constituted State of Vermont for her immediate admission into the Union and representation in the Continental Congress.

"He declared to that body that no person could dispute his attachment to and sufferings in the cause of his country; but he did not hesitate to assert that Vermont had an indubitable right to agree on terms of cessation of hostilities with Great Britain, provided the United States persist in rejecting her application for a union with the States. Vermont, of all people, would be the most miserable were she obliged to defend the independence of the United States, and they at the same time at full liberty to overthrow and ruin the independence of Vermont. I am persuaded, when Congress consider the circumstances of this State, they will not be more surprised that I have transmitted these letters [letters from British emissaries containing treasonable overtures] than that I have kept them in custody; for I am as resolutely determined to defend the independence of Vermont as Congress are that of the United States, and rather

than submit will retire with the hardy Green mountain boys into the desolate caverns of the mountains and wage war with human nature at large."—Hoskins's History of Vermont, page 102.

Such was the resolute and defiant attitude maintained by the infant State of Vermont, demanding of Congress admission into the Union as a right, although her independence had never been recognized nor her sovereignty established; and even her boundaries were disputed and her territory claimed by the neighboring States. And yet the memory of the bold Ethan Allen is today as much revered for that spirited and emphatic declaration to Congress as for his famous reply to the British commander of Ticonderoga, asking by what authority he demanded its surrender: "I demand it in the name of the Great Jehovah and the Continental Congress!"

The congressional treatment of the eleven States lately in insurrection, according to the plan of the gentleman from Pennsylvania, is so well adapted to provoke continued hostility to the Government and goad a maddened population into imbecile and desperate resistance that the extreme resort of confiscation which would then be justified has already been anticipated by an elaborate calculation. Four thousand million dollars are to be raised by sale of lands and such other property as can be found.

Four billions of money, mark you, to be raised out of a country blasted by a devastating war, out of a people stripped and picked by rebel sequestration, their whole slave property and their entire circulating medium annihilated; a people at this moment, many of them, begging their victuals and clothes of the North!

This programme of dissolution and reconstruction is of course incomplete without a series of amendments to the Constitution, all of which are to be consummated "before the defunct States are admitted to be capable of State action."

"They ought never to be recognized as capable of acting in the Union or of being counted as valid States until the Constitution shall have been so amended as to make it what its framers intended, and so as to secure perpetual ascendancy to the Party of the Union," &c.

The first of these amendments is to change the basis of representation from Federal numbers to actual voters. The others are to allow Congress to lay a duty on exports, to make all laws uniform, to prohibit the assumption of the rebel debt, and lastly, to extend the right of suffrage to the emancipated blacks, although upon this point there seems to be some doubt as to whether the result may not be reached by direct congressional action. In either case, whether by constitutional amendment or by legislation, universal negro suffrage must be enforced as well "to continue the Republican

ascendancy" as because "without the right of suffrage in the late slave States the slaves had far better been left in bondage."

As an earnest of the enforcement of this policy, and as a pledge of the principle on which this Congress would legislate for Territories over which it claimed jurisdiction, the action of this House, at a very early period of the session, may be cited.

A bill passed the House in January establishing universal negro suffrage in the District of Columbia. This was done by a valid exercise of power, Congress having by the Constitution exclusive legislation over this District in all cases. It was done, however, in direct violation of the wishes of the people of the District, and against the almost unanimous protest of the legal and qualified voters. It was not called for by the public sentiment of the country. Since the breaking out of the rebellion, New York, Illinois, Wisconsin, Minnesota, and Connecticut had been asked to enfranchise the few colored men within their limits. They all refused. In the State of New York it assumed the form of a proposition to permit negro suffrage without a property qualification. In 1860 such a proposition had been defeated by—yeas 197,503, nays 337,984. In 1864, after the presumed advance of public sentiment upon this question, a like proposition was defeated by—yeas 85,406, nays 224,336. In August, 1862, a vote was had in the State of Illinois on several propositions relating to negroes and mulattoes, with this result:

For excluding them from the State	171,893
Against	<u>71,306</u>
	100,587

Against granting them suffrage or the right to hold office.....	211,920
For.....	<u>35,649</u>
	176,271

For the enactment of laws to prohibit them from going to or voting in the State	198,938
Against	<u>44,414</u>
	154,524

As late as the autumn of 1865 the people of Connecticut refused by over six thousand majority to enfranchise the handful of colored men residing among them. An effort was made in the Thirty-Eighth Congress to incorporate the feature of negro suffrage in the bill to provide a temporary government for the Territory of Montana. It failed; and among those who voted persistently against negro suffrage in this new Territory, where there were perhaps no negroes at all, are the names of the entire Maryland delegation, consisting at that time (1864) of Messrs. Creswell, Henry Winter Davis, Harris, Thomas, and Webster.

After so many and such decided manifestations of public opinion, showing unmistakably that the people of this country are inflexibly opposed to a general and promiscuous intermingling with negroes at the polls and in public office, it was scarcely to be expected that the repudiated doctrine should be forced upon the protesting population of this District. Whatever reasons may be urged in support of universal suffrage in general, they all fail in the case of a municipal corporation. There are no people or interests within the limits of the District of Columbia of any importance that are not included within the corporate franchises of the cities of Washington and Georgetown. There is no voting done in the District except for the municipal officers of the two corporations.

It was therefore unfortunate that the political experiment of universal negro suffrage should first be applied to a city corporation, in which the horde of voters thus manufactured were, with scarcely an exception, without a particle of interest in the body whose franchises they were made to share, and whose funds they were assigned to control. Up to this time the rash feat of legislation remains a failure under the silent veto of the Senate and the dead weight of public opinion. It is significant, however, of the fate in store for eleven States, under the false doctrine that by attempted secession they have consummated the dissolution of the Union, and by the failure of their insurrection, the surrender of their insurgent armies, and full and complete submission to the authority of the Government and obedience to its laws, have done no more nor less than lapse into the condition of conquered territories, subject to the absolute disposal of Congress.

I do not propose to review in detail the arguments or to discuss the authorities by which this doctrine has been maintained. I have been surprised, upon a question of such moment, at a crisis in our country's history of such transcendent gravity, to encounter a line of reasoning so utterly fallacious. The pivot of the whole argument is the concession of belligerent rights. Humanity required an observance of those restraints and courtesies which are due to an enemy by the law of nations. Cartels for the exchange of prisoners, and flags of truce to bury the dead; are therefore pointed to as the evidences of a state of war between independent foreign nations. That is what this argument amounts to, and nothing more. I was still more astonished to find the narrow technical doctrine of estoppel drawn from its proper sphere in the county court to reënforce this feeble logic. South Carolina must be held to be out of the Union because her convention and Legislature roundly affirmed that she was in so many words. Notwithstanding the Government took issue with South Carolina upon that identical proposition, denying that she was out of the Union in law, and in fact making good that denial by wager of battle, still South Carolina, under this doctrine of estoppel, must be held to have succeeded from the very fact of failure, and the Government to have failed from the very fact of success.

Sir, we have had a war for union, not for disunion. We have fought, not to consummate secession, but to prevent it. We were called forth, and we went forth, to put down treason, to enforce the laws, to crush out rebellion, to maintain the Government, and to save the Union. With our martyred leader we first tried to save the Union with slavery and we failed. We then tried to save it without slavery and we succeeded. We did not fight to secure the ascendancy of a party, or to keep any man or set of men in office, but we fought for our country, for its Constitution, and its flag.

It was on this principle that the great contest began, and it was on this principle, held steadily in view by every department of the Government that it was prosecuted to a successful issue. These principles were clearly set forth by President Lincoln in his various proclamations and messages, letters and speeches. In his first inaugural. March 4, 1861, he laid down the correct doctrine, from which, to the day of his death, he never departed:

"It follows that no State upon its own mere motion can lawfully get out of the Union; that resolves and ordinances to that effect are legally void; and that acts of violence within any State or States against the authority of the United States are insurrectionary or revolutionary, according to circumstances. I consider, therefore, that in view of the Constitution and laws, the Union is unbroken, and to the extent of

my ability I shall take care, as the Constitution itself expressly enjoins upon me, that the laws of the Union be faithfully executed in all the States."

The executive department, speaking through the Secretary of State, explicitly declared that—

"The Congress of the United States furnishes a constitutional forum for debate between the alienated parties. Senators and Representatives from the loyal portion of the people are thus already fully empowered to confer; and seats also are vacant and inviting Senators and Representatives from the discontented party who may be constitutionally sent there from the States involved in the insurrection."

To the same principle Congress also is committed by its acts and resolutions. The act of August, 1861, laying a direct tax of \$20,000,000 upon the United States, apportions that sum among the several States, including all the States then in rebellion by name. Thus Virginia is recognized as still a State within the Union: "To the State of Virginia, \$937,530.667." [sic] And so with North Carolina, South Carolina, and all the eleven. Each is taxed by name, and each is named as a State, as in the case of the loyal States.

The act of Congress of March 4, 1862, under which the present House of Representatives was chosen, recognizes the right of these States to representation, in terms.

Thus we have the great fact that these States were living States, States of this Union, States subject to taxation and entitled to representation, conclusively settled by Congress itself, and settled at the very time when the people of those States were actually in flagrant insurrection. If doubt should still exist as to the true intent and meaning of these acts let Congress be its own interpreter. The record here is familiar but cannot be too often repeated. It is one of the great landmarks in this controversy and should always be kept in sight. In July, 1861, a resolution was adopted by such large majorities in both Houses of Congress as amounted virtually to unanimity, declaring:

"That this war is not prosecuted upon our part in any spirit of oppression, nor for any purpose of conquest or subjugation, nor purpose of overthrowing or interfering with the rights or established institutions of those States, but to defend and maintain the supremacy of the Constitution and all laws made in pursuance thereof, and to preserve the Union with all the dignity, equality, and rights of the several States unimpaired; that as soon as these objects are accomplished the war ought to cease."

The principle thus emphatically pronounced by Congress and the Executive was the common sentiment and universal understanding of the whole country throughout the entire period of the rebellion. It was affirmed by State Legislatures; it was announced in party platforms; it was enforced everywhere by loyal speakers and the loyal press. It was significantly recognized by the Union national convention which admitted the delegations from Tennessee, Arkansas, and Louisiana, upon an equal footing with the other States, following in this respect the example of Congress, and presented the name of Andrew Johnson, of Tennessee, to the suffrages of the American people as the Union candidate for Vice President of the United States. It was triumphantly sustained at the ballot-box by the nation at large. And it is the same Andrew Johnson, of Tennessee, who is today laboring to apply that same principle, in perfect harmony and consistency with his own record and with the known wishes of the lamented Lincoln, surrounded and supported by a Cabinet of Lincoln's selection.

The evidence of the recognition of these States as States in the Union, by force of the combined authority of both Congress and the Executive, culminates in their ratification of the great constitutional amendment as declared by the official certificate of the Secretary of State. That certificate was officially published on the 18th of December, 1865, in pursuance of an act of Congress. (April 20, 1818,) providing that when the State Department shall have been officially notified that any proposed amendment to the Constitution had been adopted according to the provisions of that instrument—

"It shall be the duty of the Secretary of State, forthwith, to cause the said amendment to be published"
* * * * *"specifying the States by which the same may have been adopted, and that the same has become valid."*

After reciting the amendment, the certificate of the Secretary of State proceeds as follows:

"And whereas it appears from official documents on file in this Department that the amendment to the Constitution of the United States, proposed as aforesaid, has been ratified by the Legislatures of the States of Illinois, Rhode Island, Michigan, Maryland, New York, West Virginia, Maine, Kansas, Massachusetts, Pennsylvania, Virginia, Ohio, Missouri, Nevada, Indiana, Louisiana, Minnesota, Wisconsin, Vermont, Tennessee, Arkansas, Connecticut, New Hampshire, South Carolina, Alabama, North Carolina, and Georgia, in all twenty-seven States; and whereas the whole number of States in the United States is thirty-six: and whereas the before specially named States whose Legislatures have ratified the said proposed amendment constitute three fourths of the whole number of States in the United States:

Seward, Secretary of State, by virtue and in pursuance of the second section of the act of Congress approved the 20th of April, 1818, entitled 'An act to provide for the publication of the laws of the United States, and for other purposes,' do hereby certify that the amendment aforesaid has become valid to all intents and purposes as a part of the Constitution of the United States."

Thus, by the joint authority of both Congress and the Executive, eight States that are claimed to be out of the Union, or dead States within the Union, from their participation in a rebellion for slavery, are finally and conclusively recognized as constitutional States of the Union for the highest of all purposes. It is a fortunate and auspicious circumstance that the highest proof that could be offered of their legal and constitutional status is connected with the strongest guarantee that could be given of their repentance for the past and their loyalty in the future.

I use the word "repentance" designedly. True repentance consists not in loud-mouthed professions. It consists in "bringing forth fruits meet for repentance." How much the South was chastened, humbled, and punished by the stern hand of war, he only can estimate who remembers the strange, infatuated fondness with which her people cling to their peculiar institution, and who appreciates the vast amount of wealth represented by it. It must not be forgotten by those whose clamors for the punishment of traitors grow incessantly louder as the danger from treason grows less, that in addition to the loss of the flower of the southern manhood in battle; in addition to the utter annihilation of the entire circulating medium in the pockets of these people and of the invested wealth in their safes; in addition to the wide-spread devastation and ruin of a desolating war, the crowning punishment of confiscation has already been their portion. Emancipation was punishment to every man who owned a slave. I have always believed that treason was a crime. Myself, I shrank from it as from pollution, until the time came to close with it in a death-grapple. For the leaders of rebellion, those who fired the southern heart and precipitated revolution, I have no sympathy, even now, in their disgrace. I have believed that treason ought to be punished, and I believe that it has been punished. If there be those who still thirst for vengeance, there may be exceptions, but I believe that they belong principally to that class of patriots who, in the words of General Sherman, "shun the fight and the march, and are loudest, bravest, and fiercest when danger is past."

In the view which I have taken of the great constitutional amendment abolishing slavery, it appears in a fourfold aspect:

1. As a surrender of the cause of the war.
2. As a pledge of sincerity in accepting the result of the war.
3. As a guarantee of future loyalty.
4. As a punishment for treason, by confiscation.

Is anything else wanted to pacify the country, restore the Union, close up our ranks, and march with solid, unbroken front against imperialism in America and despotism throughout the world? Is anything else to be done before confidence can be restored at home, trade revived, finances strengthened, currency settled, and resources developed?

The freedmen must be cared for and protected in their rights. I admit the necessity. It is already provided for. Under the second section of the amendment Congress has all necessary power over the subject. With the learned gentleman from Ohio, [Mr. Bingham;] I had constitutional scruples about the civil rights bill which I could not overcome even for the pleasure of reversing a veto. But that bill is now a law; it will probably be several years before it is judicially negatived; in the mean time the freedmen under its operation are secure, and the public sentiment around them will gradually make all special legislation unnecessary.

Is anything else demanded? "Traitors must be kept from ruling the country they strove to ruin." "Loyal men must govern a preserved republic." That is my belief. That exigency also has been foreseen and provided for. You have a test oath searching and stringent enough to satisfy the most exacting. Under it no traitor can enter Congress or hold a Federal office. I ask you now to administer that oath to Maynard and Stokes and Cooper, and to other brave and loyal Representatives from Tennessee. I ask for the immediate and unconditional admission of the Tennessee delegation on the floor of this House upon an equal footing with those of us who come from other loyal States. It is too late to argue the claims of that State. The whole country knows them by heart. During a great portion of the war Tennessee was actually represented in Congress; in this House by Maynard, in the Senate by Andrew Johnson, the seraph Abdiel of the great rebellion:

"Faithful found

*Among the faithless, faithful only he;
Among innumerable, false, unmoved,
Unshaken, unseduced, unterrified,
His loyalty he kept, his love, his zeal."*

All the evidence taken by the joint committee on reconstruction concurs in the propriety of the prompt admission of her representatives to prevent the warm and glowing loyalty of her people from being chilled, as the loyalty of any people would be, by a persistent and contemptuous ostracism.

General Fisk, the commissioner of the Freedmen's Bureau for Tennessee and Kentucky, headquarters at Nashville, Tennessee, testifies as follows:

"Tennessee abolished slavery by her own action; she elected a Governor by the people; she repudiated the rebel debt; she ratified the constitutional amendment abolishing slavery, and did all that without executive indication or inauguration. Tennessee furnished thousands for the defense of the Union. All this is to her advantage, and were I a member of the Senate or House of Representatives of Congress I would vote most cheerfully to admit the delegation from Tennessee, believing that in so doing I would be taking a step that would increase the loyal sentiment of the State, and which would promote the tranquility and prosperity of the State."

The testimony of General George H. Thomas is equally emphatic upon this point; and, in fact, there is but one opinion among all acquainted with the actual condition of the people of that State. Why not, then, admit the Tennessee delegation? Is anything else demanded?

Mr. Speaker, I had hoped that, the joint committee of fifteen, composed as it is of gentlemen of character, experience, and ability, would have given us, as the result of their protracted labors, some proposition on which all loyal men might unite. I did hope in the beginning that within a week after their organization, at least when Congress reassembled in January, they would report in favor of the immediate admission of the representatives of Tennessee. I believe that a majority of the House were prepared to admit those Representatives on any day when the question could be fairly got before them. Their admission has been delayed, and now, under the operation of the reconstruction programme recently reported from that committee, it appears that the State of Tennessee is to be indefinitely excluded from the Union. I say indefinitely, because her admission is made to depend upon the ratification by three fourths of the States of a series of constitutional amendments, which three fourths of all the States will never ratify. It is not enough that Tennessee herself ratifies the amendment. That does not entitle her, by this scheme, to the recognition of Congress. If the real intention had been to encourage southern loyalty by discriminating in its favor, the plan would have recognized States as they successively wheeled into line upon the platform.

Not only are these States to be excluded until every one of these amendments shall have become part of the Constitution, but each is required, by the third section of the amendment, to disfranchise nearly the whole of its voting population. Disfranchisement is a war measure, and in time of rebellion is almost as necessary a means of defense as an army. It is altogether unsuited to a condition of peace, and, in fact, there can be no real peace in any community where such a proscriptive policy is long persisted in. It is unfortunately true that in most of these States the mass of the population "adhered to the late insurrection, giving it aid and comfort." Whether "voluntarily" or not would be, in the majority of cases, a nice question of casuistry. After the triumphant suppression of a revolt it is not wise or statesmanlike to go back for a minute inquisition into past offenses and canvass calmly and leisurely the by-gone effervescences of fierce excitement. "Let the dead past bury its dead." There are doubtless at the South inveterate, malignant, bitter, revengeful rebels. There are men there who, if tried for treason, lawfully convicted, and sentenced to be hung, could not succeed in getting even my signature to an application for executive clemency. Such men are a curse to any country. Such men brought on the rebellion, and such men are today doing the South more harm by their loud-mouthed ranting and offensive demonstrations than all the radicals in the country. I believe such cases to be more numerous in Maryland and the other border States than in the confederacy itself. I believe such cases to be less numerous in the late rebel army than in the great army of "sympathizers," marching like Noah's animals into the ark, male and female. On that side, as on oars, there is a class whom General Sherman's description was made to fit, "A class who shun the march and the fight, and are loudest, bravest, and fiercest when danger is past." Such men, though few in number and contemptible in power, attract attention from the noise they make. One grasshopper makes more noise in a field than a herd of cattle. As a question of propriety, I should like to see such men suppressed; by disfranchisement if that would get rid of them.

But, unfortunately, no practicable test can be found to discriminate such men from others whom it is not

politic nor right to proscribe. I refer to men "who did go into rebellion, but who, having taken the amnesty oath, mean in good faith to keep it." Such men are loyal men, and loyal men ought to participate in the government of the country. Sir, I know men who have done, and are now doing, yeoman service in the Union cause who could not literally swear that they had never "voluntarily adhered to the late insurrection, giving it aid and comfort." Are such men to be now kicked out into the limbo of traitors? God forbid! Let us rather take them by the hand and encourage them to persevere. Likely as not, they will one day get far beyond us in the progress of loyalty, and turn back to reproach us for our want of zeal! No, sir, you will have to abandon this sweeping indiscriminate proscription of a whole population, that is, if you are in earnest when you say "it is expedient that the States lately in insurrection should at the earliest day consistent with the future peace and safety of the Union be restored to full participation in all political rights." If you are not in earnest, but only want an issue to disturb the minds of the people of the North by telling them from the stump frightful stories about the people of the South to prevent their participation in the next presidential election, and thus "to secure the Republican ascendancy;" why then keep it in, and let an intelligent people decide the issue.

The first section of the proposed amendment is as follows:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

By the fifth section—

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

And by the bill accompanying the proposed

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amendment, entitled "A bill to provide for the restoration of the States lately in insurrection to their full political rights," It is required, as a condition-precedent to the admission into Congress of the Senators and Representatives from such State, that it shall have modified its constitution and laws in conformity with the amendments.

By "citizens of the United States" are meant persons of color, they being declared such by act of Congress. The "privileges or immunities" of citizens are such as Congress may by law ascertain and define. I presume it will not be denied that under this amendment, if adopted, it would be for Congress to define and determine by law in what the "privileges and immunities" of citizens of the United States consist, in like manner as Congress has already, under the constitutional amendment abolishing slavery and conferring the power to enforce its abolition by appropriate legislation, determined that the emancipated blacks are "citizens of the United States," and defined in what their civil rights as such citizens consist.

An act of Congress to define the privileges and immunities of citizens could and doubtless would be made to include the privileges of voting, serving upon juries, and of holding office. Those privileges must, then, be incorporated into the constitution and laws of each of the States excluded before they have complied with the terms prescribed. Civil rights are limited to suing and testifying in courts, and being amenable to the same punishments as other citizens. "Privileges and immunities" are a much broader and more comprehensive term, and may, by definition, include suffrage, jury duty, and eligibility to office.

It might, indeed, be argued that even in the absence of a declaratory law, these franchises are necessarily conferred upon all "citizens of the United States" by the simple terms of the amendment itself: With such a law, negro suffrage and eligibility is at once enforced over the whole country; in the excluded States by virtue of the provision requiring them to modify their constitution and laws as a condition-precedent to representation; in the loyal States by virtue of the provision giving Congress power to enforce the provisions referred to by appropriate legislation.

It is no recommendation to me that this covert introduction of negro suffrage is so artfully framed as almost to escape observation and avoid odium. I would much rather vote for a direct, honest, manly proposition that all men could understand at once, than for an equivocal process accomplishing the same result by machinery. If it is wise, statesmanlike, patriotic, or proper to take from the States the qualifications of voters, and to enforce at this time over the length and breadth of the land universal negro suffrage and eligibility, then, sir, let us make the issue visible and face it like men.

The second and fourth sections relate to the basis of representation and the repudiation of the rebel debt and of claims for emancipated slaves.

That relating to the basis of representation is founded upon a correct principle, and if submitted in connection with a proposition looking to the immediate and unconditional admission of the representation of Tennessee and

Arkansas would probably remove all difficulty. No special objection would be made to the fourth section, although I regard it as wholly unnecessary. The idea that under any combination of parties in the future this Congress would ever entertain a proposition to pay the rebel debt or compensate the owners of emancipated slaves is too trifling to govern the action of statesmen. As for the individual States, they have all or nearly all, incorporated such a provision in their constitutions, and if they had not they are not able by any process to escape the payment of their proportion of the national debt. The collection laws of the Government operate directly upon individuals and upon property in all the States. It will be as much as the people of those States can do for many years to pay their share of the Federal taxes, and the danger of their assuming the debt of the exploded confederacy or the payment of claims for emancipated slaves is, in my judgment, wholly imaginary.

A few words with respect to the present condition and future prospects of the southern States generally, and I have done.

As to the disposition of the people of these States, there are two lights to guide us to a judgment. One is by way of inference or logical deduction from the necessities of their situation; the other is positive testimony. After all is said about rebels that can be said, they are but human beings governed by like motives and actuated by self-interest with other mortals. Obviously this interest prompts them to renew and strengthen their allegiance to the Government. The surrender of slavery has left them without a motive for rebellion. Loyalty, which means habitual obedience to law, is man's normal condition in society. These people most necessarily settle into that condition, if not prevented by maladministration. Their strongest desire now is naturally to be completely restored to the full enjoyment of their political privileges as members of the Union. This desire has increased with the difficulties thrown in their way. I was not of those who wished to see the Representatives elected from these States resuming their seats in this Hall on the first day of the session as though nothing had happened. I was perfectly willing to have them subjected to an ordeal of reasonable delay, one result of which would be to increase their appreciation of the privilege they sought. It is their interest now to overthrow the dogma of secession since a legitimate application of it results in fixing their status as aliens and subjugated. The only interest they ever had in upholding it was as a means of protecting, in the last resort, their peculiar institution. They will gradually, but surely, become fixed in sound principles of constitutional construction, from the very necessities of the situation.

It seemed at one time absurd to suppose that the present generation could ever form a sincere attachment, to the Federal Government or any department of it. And yet the forgiving disposition manifested by our lamented President Lincoln caused the death of him whom they had loathed to be sincerely mourned as a calamity to the South. The unexpected clemency exhibited by President Johnson, compelled by the exigencies of his great office and the moderate counsels of Mr. Lincoln's Cabinet, to leave harsh and vindictive utterances, hot from the boiling caldron of civil war, unrealized in time of peace soon won for the executive department of the Government the confidence and even affection of the majority of the southern masses. Their interest in the legislative branch of the Government will return at once with their admission to a participation in it.

After a careful and anxious survey of the situation, made under an awful sense of responsibility to my country and to history, with no personal predilection or private interest that I am aware of to warp my judgment toward the conclusion it has reached but with prejudices and interests all bearing in an opposite direction, I am constrained to believe that all further guarantees, by way of constitutional amendment, or otherwise, as conditions-*precedent* to a cautious and discriminating admission of loyal Representatives from States and districts whose inhabitants have been in insurrection, but who now present themselves in an attitude of loyalty and harmony, are unnecessary, impolitic, unstatesmanlike, and prejudicial to the peace and welfare of the country. The guarantees we have, and which I deem sufficient, are:

1. The constitutional amendment abolishing slavery and conferring upon Congress ample power to enforce it; and

2. A loyal army of one million fighting men, just as determined to stamp out treason should it dare to show itself in the future, as they have proved themselves able to deal with it in the past.

The direct testimony as to the actual condition of the southern people is of course conflicting. I have, however, seen nothing which has materially shaken my confidence in the evidence of Lieutenant General Grant. His opportunities for observation have been ample, his judgment is not biased by partisanship, his sound common sense, his knowledge of human nature, his keen penetration and almost intuitive discernment of character are the most solid pillars upon which his great reputation rests.

His testimony is substantially corroborated by that of Major General Sheridan, furnished at a later period. General Grant testifies as follows:

"I am satisfied that the mass of thinking men of the South accept the present situation of affairs in

good faith. The questions which have heretofore divided the sentiment of the people of the two sections—slavery and State rights, or the right of a State to secede from the Union—they regard as having been settled forever by the highest tribunal—arms—that man can resort to. I was pleased to learn from the leading men whom I met that they not only accepted the decision arrived at as final, but now that the smoke of battle has cleared away and time has been given for reflection, that this decision has been a fortunate one for the whole country, they receiving like benefits from it with those who opposed then in the field and in council.

"Four years of war, during which law was executed only at the point of the bayonet throughout the States in rebellion, have left the people possibly in a condition not to yield that ready obedience to civil authority the American people have generally been in the habit of yielding. This would render the presence of small garrisons throughout these States necessary until such time as labor returns to its proper channel and civil authority is fully established. I did not meet any one, either those holding places under the Government or citizens of the southern States, who think it practicable to withdraw the military from the South at present. The white and the black mutually require the protection of the General Government.

"There is such universal acquiescence the authority of the General Government, throughout the portions of the country visited by me that the mere presence of a military force without regard to numbers, is sufficient to maintain order. The good of the country and economy require that the force kept in the interior, where there are many freedmen. (elsewhere in the southern States than at forts upon the sea-coast no force is necessary.) should all be white troops. The reasons for this are obvious without mentioning many of them. The presence of black troops, lately slaves, demoralizes labor, both by their advice and by furnishing in their camps a resort for the freedmen for long distances around. White troops generally excite no opposition, and therefore a small number of them can maintain order in a given district. Colored troops must be kept in bodies sufficient to defend themselves. It is not the thinking men who would use violence toward any class of troops sent among them by the General Government, but the ignorant in some places might; and the late slave seems to be imbued with the idea that the property of his late master should, by right, belong to him or at least should have no protection from the colored soldier. There is danger of collisions being brought on by such causes.

"My observations lead me to the conclusion that the citizens of the southern States are anxious to return to self-government within the Union as soon as possible; that while reconstructing they want and require protection from the Government; that they are in earnest in wishing to do what they think is required by the Government, not humiliating to them as citizens, and if such a course were pointed out they would pursue it in good faith. It is to be regretted that there cannot be a greater commingling at this time between the citizens of the two sections, and particularly with those intrusted with the law-making power."

Mr. Speaker, it is not well that the people should be deceived in this matter, nor can they be. The question is simply one of union or disunion. Let the issue be frankly made and squarely met. Let the great contest be made under no doubtful colors, with trumpets sounding no uncertain sound, and may God defend the right!

For myself, I wish no new war-cry. I want to see no new motto emblazoned upon the victorious flag of my country. I will recognize none that has not been with it under fire. "Liberty and Union!" words embroidered there by the eloquence of Webster, are still proudly borne upon its folds. Let them remain there, with all the added significance that the great war for liberty and Union has imparted; with universal liberty achieved for all the inhabitants of the land, and Union, unconditional Union, the determined aim of all who rally around it.

Mr. INGERSOLL. I had fondly hoped, Mr. Speaker, when Lee surrendered to General Grant, and Johnston surrendered to General Sherman, the last armies of the rebellion, that we had heard the last of southern chivalry and that we also had heard the last and seen the last of northern sycophancy and northern flunkysism. I had fondly hoped that there had been evinced enough of heroism and patriotism in the northern people in meeting and overpowering the rebel armies in that one grand continuous "onward march" for four years in maintenance of the integrity of the Republic to have inspired those men who in former years had been the subservient tools of the southern aristocracy with something like an appreciation of true manhood, so that they would, either for shame, or by virtue of the heroic example that had been set them by the true men of the North have been willing to have remained in silence, and let the work of reconstruction be performed by those who had saved the country by arms,

or at least not have shocked the country again by that flunkyism, that subserviency, that sycophancy, that has ever disgraced that class of the northern people in their pliant yielding to every demand of the South. I had hoped that those examples of heroism would have had at least a silencing effect upon them, and that they would not have thrust themselves forward as the willing tools of their former masters.

But, sir, in this I have been mistaken; my fond hopes have not been consummated. I have been mortified beyond expression to find in the North that same set of men now advocating with the same reckless energy, and the same lack of honor and of principle, anything and everything which the reconstructed rebels tell them to advocate. They are as ready and willing today to subserve the purposes of the whipped yet arrogant rebels as they ever were. They are already to join hands today with them as they did in the passage of the odious compromise measures of 1850, just as they would have joined hands with them during the rebellion if they could have reached over the line of loyal bayonets between; just as they did join principles with them in their Chicago convention and platform in 1864 for the sake of restoration to political power, or even for the moiety of power that might be granted them by the generosity of the South; but what can you now expect of the men who in time of war sympathized with the enemies of the country? The old battles for liberty and justice on the one side and for slavery and tyranny on the other are upon us again, and we must fight them out. The clash of arms it is true has ceased, the physical battle has ended between the North and South, but the old battle of ideas is upon us still. The honest-hearted, patriotic, high-minded, honorable men in the North who are contending for principle have the same opposition, the same obstacles, to meet and overcome that they had before the rebellion. We have advanced, it is true, but there is great work yet before us. The rebels were not made rebels in a day, and they cannot be made patriots in a day. They were the legitimate offspring of slavery after an incubation of at least half a century, and now some are so crazy as to suppose that they can be turned into patriots in an hour. In my opinion, they must be born again. The only difference is this: during the war the rebel had a musket, now he has none. The difference is in the musket, not in the rebel.

Mr. Speaker, if the northern people had been united upon the great principles upon which this war was prosecuted, and in the prosecution of the war at any time during the rebellion, it would have insured the complete and immediate overthrow of the rebel power and the establishment of peace upon the broad principles of eternal justice. We lacked that unanimity, and hence the terribly protracted struggle, involving the sacrifice of half a million noble men and millions of treasure. It required all the energy of the honest-hearted and patriotic people to maintain the arm of the Government against the rebellion, aided and encouraged as it was by the copperhead party; and now that the war has ceased it requires all the same energy, all the same patriotism, all the same devotion to principles, to maintain the legislative power of the country against the power that has been defeated on the field of battle but which is now attempting to usurp the Government, and in this wicked attempt they are aided, I regret to say, by the Executive of this nation; in fact, he is their leader; without him they would be powerless for evil. We have not only the defeated rebels to fight in this contest, together with their natural allies the copperheads in the North, those who sympathized with them and would have fraternized with them, but for the line of loyal army that interposed between them and their rebel friends, but we have in addition the executive power and patronage of this Government.

But, sir, we are not dismayed nor disheartened. We have been used to temporary defeats, to severer trials than this. We have gone through a storm of war and blood without intimidation, and, sir, as God loves liberty and justice, as the American heart throbs in response to the sentiment of universal liberty, just so sure this same power that was unconquerable in war will be successful in peace, and we shall triumph at last over southern aristocracy and chivalry, over northern sycophancy and flunkyism, and the President also. They will all have to succumb to the heroic and invincible power of northern patriotism, fighting as we are the battles of universal liberty and universal justice.

No, the northern patriots are not disheartened. They have given freely of their blood and treasure; they are now submitting to taxation by reason of the burdens that have been imposed by the war without a murmur; they have submitted to it all without complaint, and with an endurance and a confiding trust that have no parallel in history, and they are ready to endure and suffer whatever may be necessary for the glory and unity of the Republic. They will not suffer the fruits of their great victory, won at such enormous sacrifices, to be bartered away. They will reap the fruits of their victory; they will reestablish the Republic on the principles of justice, and they will never permit any rebel State to be represented in the Congress of the United States until it shall establish a government that is republican in form, and recognizes the rights of mankind, irrespective of color, within its local jurisdiction.

In my opinion, Mr. Speaker, there has been a false issue presented to the people. The President of the United

States has done what he could to present an issue to the people that is calculated to mislead and deceive them. He has disguised his real purpose. He talks plausibly (so do all imposters) about "harmonious relations," "taxation without representation," occasionally mentions "soldiers and sailors," and now and then even ventures to use the word "patriotism." But what is all this for? Look at his acts, and then say to me, if you can, that the dearest object of his heart is not to secure representation from the rebel States, so that he may receive their support as a candidate for election to the Presidency in 1868, and receive their vote in the Electoral College. Under a pretense of restoring the Union he is playing a game for the "succession," otherwise he would demand guarantees from the South that the commonest prudence would declare necessary before they are clothed with full political power.

The President and his friends continually persist in declaring to the people that the issue now is, whether or not a State can secede; whether or not the States of the South have been out of the Union or have continued in it; that the question now is, in what way we shall "restore" those States to the Union, or, in the language of the President, "restore them to harmonious relations with the Government;" for the President denies that they have ever been out of the Union, and his present friends sustain his side of the issue.

Now, so far as the practical question for our action is concerned, so far as the interests of this Republic are concerned; so far as the interests of liberty and of justice and of universal right are concerned, it is an immaterial issue whether they are in or out of the Union. So far as the legislation of Congress is concerned, so far as the future status of the States that have been in rebellion is concerned, it matters not whether they have been out of the Union or not, or whether they are in the Union or not. We have heard too much already about States in and out of the Union, and not enough about the rebels in those States.

The question is not, whether those States shall have representation in Congress. but whether the rebels in those States shall be so represented, and allowed to vote here with reference to a restoration of those States to the "harmonious relations" we have heard so much about. It is a matter of supreme indifference to me and to the loyal masses of this country whether those States, technically speaking, are in or out of the Union. But it is a question of vital importance to the country whether those unrepentant rebels shall be represented in Congress, and by their power here defeat the objects of the loyal majority in Congress, defeat the restoration of the Union upon a loyal and humane basis. This is the real issue.

And so far as my voice can go I will use it for the purpose of unmasking the deception that the President of the United States would impose upon the people of this country. To what does it amount to whether I insist that the States are out of the Union, if I allow them to be represented here? Or what does it amount to if I concede that they have never been out of the Union, if I consent to their being represented here? Nothing in the world. They will admit that they are out of the Union, if you will admit them to representation in Congress; and they will not even thank you for insisting that they are in the Union unless you also admit them to representation in Congress; the power to vote loyalty down is what they want. The question is, whether the rebels (who would control absolutely the power and future destiny of those States if they are admitted into the Halls of Congress) are in a fit condition to be allowed representation here. You know, Mr. Speaker, and I know, that when a State, no matter how long it has been in rebellion or what the effect of that rebellion may have been upon that State or its people, is once admitted to representation in Congress it is placed on an equal footing with the other States of this Union, and has the same rights in Congress and out of it that any loyal State has. If you let the President carry out his programme of restoration, then farewell to your intervention by Congress; farewell to the restraining power of the Freedmen's Bureau; farewell to your constitutional amendments and your "civil rights;" farewell to any and all legislation here which interposes in behalf of the true Union men of the southern States.

When you admit these rebel States to representation here they care not whether you consider them as being in the Union or out of the Union so long as you give them a voice here again. And when you give them their votes here you give them a power which, when united with their northern sympathizers in Congress, will overwhelm the Union party and Union measures and reform (I should say deform) this Union in accordance with their own ideas. Are you, the million of brave and patriotic soldiers who survived the shock of war; are you, the patriotic men who defended and sustained our Army against the assaults of the "fire-in-the-rear" party, ready for this kind of restoration? The sacred blood of our martyred heroes cries to Heaven against it.

I take the ground, admitting, for the sake of argument, most distinctly, that no matter if a State cannot get out and never was out of the Union, yet by the rebellion of its people against this Government, by waging open war upon its

liable to be treated by this Government in all respects as one who never was a citizen of this Government, a foreigner domiciled within its territory, to say nothing of the right of the Government to hang them as rebels and enemies. If that position is correct, then it follows that if within any certain State all its inhabitants become alien enemies the Congress of the United States is alone vested with power to establish a government for them, to make laws for them, to control them so long as they shall remain alien enemies or simply aliens. I lay this down as an axiom in our Government: that when a person is an alien enemy, either by being the subject of a foreign jurisdiction or by virtue of his own treason, he remains an alien enemy to this Government until Congress relieves him from that disability. The President's position is, that a citizen of the United States may be a rebel belligerent firing at the life of the nation today, and a lawful citizen tomorrow, and entitled of right to representation in Congress!

An alien enemy, being such by virtue of his rebellion and treason, forfeits all the rights that he ever enjoyed under the Constitution and as a citizen of the United States. He forfeits the right to vote; he forfeits the right to be represented in Congress; he forfeits the right to hold office; he forfeits every right except such as he may exercise under the law of nations; and the fact that he may have been born in this country only adds a deeper blackness to his crime; he is entitled to only the same protection, and that, in fact, only by the courtesy of the Government, that would be accorded to a subject of Great Britain, or any other foreign Power, if he were simply domiciled within the jurisdiction of the United States. Let us not forget that these rebels were the most favored of our citizens. Their every interest had been generously protected and fostered by the Government always; and now, after they have sent to untimely graves half a million of the nation's bravest sons; after they have deluged the land with blood and covered it with a shroud of woe, in the names of Fort Pillow, Libby prison, and Andersonville, they demand representation in Congress, and Andrew Johnson and William H. Seward say they ought to have it.

Mr. Speaker, am I right when I declare that the people of these rebellious States are alien enemies to this Government? If I am, when and by what means did they become alien enemies? Was it by act of the Government of the United States? No, sir. Was it by their own act of war? It was. If, then, they were ever alien enemies to this Government, when did they cease to be such; or are they not alien enemies today? They are alien enemies this day, unless by act of Congress they have been recognized as being otherwise. The President cannot change an alien into a citizen. The Constitution has vested no power of naturalization upon the President. Congress alone is vested with that power. A foreign-born subject is required to reside in this country for five years before he can become a citizen, unless he has served in the Army; then why should these native-born rebels receive so much more consideration than a foreigner residing peaceably among us with the intention of becoming a citizen?

Sir, let me lay down in connection with this subject this proposition of law: that in order to be an alien to the United States Government it is not necessary that a man should be foreign-born. He may be an alien although not foreign-born, . And I hold, sir, that the people of the southern States did, by treason and rebellion, become alien enemies to this Government. By their warfare against the Government they became its enemies; and by the laws of war they became alien enemies and liable to be treated as such. Let me read, upon this point, from Lawrence's Wheaton on International Law, page 899:

"In the United States it is incorrect to suppose that alien as opposed to citizen means foreign as respects country. Indians are the subjects of the United States, and therefore are not in mere right of home birth citizens of the United States; but they may be made citizens by some competent act of the General Government, by treaty or otherwise."

Now, sir, with reference to these rebels who inaugurated a rebellion, who formed a *de facto* government, recognized by the civilized Powers of the world as entitled to belligerent rights; which was recognized by our own Government as entitled to belligerent rights; they became enemies, and alien enemies, although not foreign-born. And, sir, I hold, in accordance with the law which I have read, that the character of alien continues until relieved by competent authority of the General Government.

I read now from the opinion of the Supreme Court of the United States, as recorded in 2 Black's Reports, page 666, to show that the inhabitants of the southern States did, by virtue of their rebellion and treason against the United States, become alien enemies, and that is an independent fact, without reference to the status of the rebel States in their relation to the Union:

"A war may exist where one of the belligerents claims sovereign rights as against the other. Insurrection against a Government may or may not culminate in an organized rebellion, but a civil war always begins by insurrection against the lawful authority of the Government. A civil war is never solemnly declared; it becomes such by its accidents—the number, power, and organization of the persons who carry it on. When the party in rebellion occupy and hold in hostile manner a certain portion

of territory; have deviated their independence; have cast off their allegiance; have organized armies; have commenced hostilities against their former sovereign, the world acknowledges them as belligerents, and the contest a war. They claim to be in arms to establish their liberty and independence, in order to become a sovereign State, while the sovereign party treats them as insurgents and rebels who owe allegiance, and who should be punished with death for their treason.

"The laws of war, as established among nations, have their foundation in reason, and all tend to mitigate the cruelties and misery produced by the scourge of war. Hence the parties to a civil war usually concede to each other belligerent rights. They exchange prisoners, and adopt the other courtesies and rules common to public or national wars.

"A civil war,' says Vattel, 'breaks the bands of society and government, or at least suspends their force and effect; it produces in the nation two independent parties, who consider each other as enemies, and acknowledge no common judge. Those two parties, therefore, must necessarily be considered as constituting, at least for a time, two separate bodies, two distinct societies. Having no common superior to judge between them, they stand in precisely the same predicament as two nations who engage in a contest and have recourse to arms.'

"This being the case, it is very evident that the common laws of war, those maxims of humanity, moderation, and honor, ought to be observed by both parties in every civil war. Should the sovereign conceive he has a right to hang up his prisoners as rebels, the opposite party will make reprisals, &c.; the war will become cruel, horrible, and every day more destructive to the nation."

The Supreme Court say:

"As a civil war is never publicly proclaimed *eo nomine*, against insurgents, its actual existence is a fact in our domestic history, which the court is bound to notice and to know."

"The true test of its existence, as found in the writings of the sages of the common law, may be thus summarily stated: 'When the regular course of justice is interrupted by revolt, rebellion, or insurrection, so that the courts of justice cannot be kept open, civil war exists and hostilities may be prosecuted on the same footing as if those opposing the Government were foreign enemies invading the land.'

"The law of nations is also called the law of nature; it is founded on the common consent as well as the common sense of the world. *It contains no such anomalous doctrine as that which this court are now for the first time desired to pronounce, to wit,* that insurgents who have risen in rebellion against their sovereign, expelled her courts, established a revolutionary government, organized armies, and commenced hostilities are not ENEMIES because they are traitors; and a war levied upon the Government by *traitors* in order to dismember and destroy it is not a war because it is 'an *insurrection*.' "

In this opinion the court declare that these rebels, these traitors, these insurgents, who have been prosecuting this war against the Government, are ENEMIES, to be treated in the light of *public enemies*, or *alien enemies*, entitled to the same rights as though it were a foreign war originally, and no more. And now I ask, when the character of an alien once attaches to the rebellious party, when does that character cease? Does it cease simply because they acknowledge their defeat on the battle-field?

Not at all. The character of any criminal does not change when, being detected and overtaken, he acknowledges the crime and proffers to make restitution; he is a criminal still. The rebels were only defeated in carrying out their traitorous designs because they were met and overpowered by the heroism of the northern people. Let us illustrate this a little further. We will presume that the people of Mississippi in 1860 were peaceful citizens; in 1861 they were rebels; in 1862, 1863, and 1864 they were belligerents; in 1865 they were subjugated; in 1866 the Government arrests the leaders for treason. But, say the rebels, you cannot try us for treason; although at first we were rebels, we afterward established the "confederacy," and you recognized us as a *de facto* government, as alien enemies, as belligerents; you waived the right to try us for treason in thus recognizing us. Well, we reply, if that is so, we will dismiss the charge of treason, and treat you as conquered public enemies, as aliens. No, no; that will not do; we will not submit to that; we claim, that notwithstanding you had the lawful right to fight and subdue us, that as soon as you wrested our arms from us we were at once transformed into citizens of the United States Government we sought to destroy, and are now entitled to representation in Congress and all other rights we ever enjoyed under the Constitution. We deny your conclusions, and we propose to contest the point with you before the people.

Mr. Speaker, in my opinion we would have but little trouble in settling these difficulties, or finding a solution of the problems which now weigh so heavily upon the country, had the President of the United States but conscientiously and honestly discharged his duty. Had he had more judgment and less ambition, more patriotism

and less egotism, had he desired to subserve the interests of his country rather than his own, we would have had an easy deliverance from our troubles. When the surrender of the rebel armies was made, Andrew Johnson was President of the United States. He had exercised the authority but a few days. He had no experience in the administration of the Government, but he had ambition. He had a desire to make himself conspicuous before the country and before the world, and consequently, blinded by his ambition and crazed by his egotism, he refused to do what the simplest-minded man knew he ought to have done under such circumstances. You all remember the condition of the country at that time. He ought to have called the Congress together at once in special session, called together the representatives of the party who, confiding in his honor and his patriotism, based upon what he had publicly said on all occasions from the very inauguration of the rebellion, elected him Vice President.

Had he thus called the representatives of the people together to counsel and advise with, it would have been an easy matter for Congress at that time to have shaped the legislation of the country to a solution of these difficulties, and adjusted a basis of reconstruction satisfactory alike to the loyal people of the North and the subjugated people of the South. The latter were willing at the time of the surrender to accept almost any conditions which would have spared their forfeited lives and their forfeited property. They were thoroughly whipped; they were subjugated, and they were ready to acknowledge it. From the published speeches the President had made previous to their subjugation, and immediately after, they never dreamed of finding any clemency in his heart. They simply expected the rights and privileges belonging to a vanquished foe. They never dreamed of being regarded as citizens of the United States, entitled to the right of representation in Congress, and the right to "restore" the country they had moved heaven and earth to destroy.

No, sir, they never dreamed of it. The leaders expected to be hung, if they put any reliance upon the oft-repeated utterance of Mr. Johnson, that they should be hung, for he

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had declared time and again that he would hang them; that he would make treason odious; that it was the greatest crime known to the calendar of crimes; that traitors should be punished. This he had declared, and they knew it. With an army to back him, and loyal people to sustain him in carrying out these declarations, they never dreamed of finding clemency and encouragement and protection, as the sequel has shown they have found, at his hands! Not only protection, sir, but promotion! and he has given them to understand that they have a constitutional right to deliberate in the councils of the Government they attempted to disrupt and overwhelm; that they have a constitutional right to make laws which are to determine the future status of the States and the people of those States who have been engaged in this formidable rebellion against the Government. Under the President's programme they are becoming much emboldened of late. Many of the southern papers insist upon it that all acts of the present Congress are illegal and void, for the reason that the eleven southern States are denied representation in Congress. They even go so far as to advise the President to call the southern representatives to Washington, and have them go in a body and claim their seats; and in case opposition is offered to this proposed outrage, they tell the President to apply the bayonet and clear the House of the radicals! This is easily enough said, but it will never be done. The New York News, referring to this subject of representation in a late number, said:

"The radicals oppose their admission. They bar the doors. They stand armed with stolen and unlawful weapons to dispute the passage of duly elected members of Congress to their rightful seats in the national Legislature. Then why does not the Chief Magistrate of the Republic interpose his authority to prevent this outrage against the representatives of the States and of the people? He has the power to do so. He is Commander-in-Chief of the armies of the United States, and has at his disposal an armed and disciplined force amply sufficient to preserve the peace at the seat of Government, and to enforce obedience to the laws beneath the roof of the Capitol of the Republic. Let a day be fixed for the representatives of the southern States and people to take their seats in Congress. The seats are there ready to receive the rightful claimants. Let them enter, take possession of their own and fulfill their official functions. Should violence be offered them by any man, or number of men, under any pretense whatsoever, let the President send a detachment of federal troops to preserve order in the Capitol.

"If radical conspirators attempt to support their usurpation by force, the consequences be upon their heads. It is time that the Republic should have a complete and constitutional Legislature. We have been ruled too long by faction. We have been too long subject to the caprices of fanatics. The country must be permitted to resume its normal condition, and if revolutionists stand in the way, the executive arm is strong enough to sweep them from the path of restoration."

The Richmond Whig gives the following advice to Mr. Johnson:

"Call together a Congress composed of members from all the States of the Union, as well those of the South as those of the North, and that if the radical members should refuse to attend, that he shall recognize the northern conservative members and the southern members as the lawful Congress to sit in the Capitol and legislate for the country. The Whig does not see how this programme could be accomplished peacefully and supposes that the radical sectional Congress, as it terms it, would continue its sessions, appeal to the people, and proceed to muster an army if the United States Army should not side with it. In that case the Whig believes that the President would be prepared to meet force with force."

The Enquirer of the same date, discoursing on the same subject, says:

"It is evident, indeed, that a violent collision between Congress and the President is inevitable, and is imminent, if the true spirit and intent of the Constitution shall remain true, and its forms abused for the usurpation of power. In this issue the President has thus far been altogether in the right, and has evinced all the moderation. Congress has been wholly in the wrong and has displayed a corresponding violence. That the public peace is yet unbroken is due to the President. It depends upon Congress whether it can be permanently maintained, for we take it for granted that the President will not yield himself an unresisting victim to revolutionary violence, whatever garb it may wear, or allow the Constitution, to defend which the sword has been given him, to be overturned or destroyed. A congressional coup d'état can be met by a presidential coup d'état, and in the collision the hardest must fend off as to what should be the President's pillow."

The Charleston South Carolinian says:

"There are obvious steps to the more firm establishment of this Government in the call of a congress composed of the members of the southern States and such members of the present Congress as are ready to sustain his policy. In such a congress there would as large a Senate and nearly as large a House, while with such a body to sustain him he can even more justly represent the Government, and throw the radicals, who shall accept the issue, into the defensive attitude of an adversary faction."

Is this "bringing forth fruits meet for repentance," that the President used to talk about? How do you like this picture of "reconstructed" rebels?

Ah! sir, this failure on the part of the President to call Congress together was a great misfortune to this country; the greatest which ever befell it, perhaps, with the exception of one. It was a greater misfortune when Booth, the assassin, sent his bullet, with unerring certainty, through the brain of that purest and best man, who, by his patriotism and by his virtue, ennobled and elevated that country for which he died. That was one of the great calamities which befell the country. Ah! how little did we then know how much we lost. The next, as it has turned out, was that Andrew Johnson was Vice President! Had Andrew Johnson been an honest man, and had he been with us, from principle, in this contest, it would, sir, have softened the rigor of that first calamity to the American people.

But Andrew Johnson was never with the Republican party on principle; never, sir. In the first place he was for maintaining this Union, as can be proved by his last speech in the United States Senate, with slavery; for he deemed slavery secure only in the Union. In that speech he distinctly avowed that he was going "to fight for slavery in the Union;" he was satisfied that in the Union was the only safety for slavery, and that outside of it was certain ruin. He emphatically declared that "the institution would be perpetual if southern men stood together in the Union."

Andrew Johnson is essentially a southern man. Born, reared, and educated in the South, he has the prejudices of the southern people; he has their animosities, their hatreds, and their superstitions. He, however, was never recognized by the leaders of the South, who inaugurated the rebellion, as one of their peers, so he sacrificed nothing of a social character when he refused to go with them. He had never been with them as one of the spokes in their political wheel. Andrew Johnson today is filled with the poison of the malaria of slavery which he inhaled in his infancy, and during the ripening years of his life, and this I say in extenuation of his present position. He talked loudly, eloquently, and well with reference to the odiousness of the rebellion and the blackness of the crime of treason while it was his interest to do so. While he could remain in the United States Senate, or so soon as he resigned that position receive the appointment of military governor of Tennessee, and go there and maintain authority and power, and receive the emoluments of office, he could talk as loudly in favor of the maintenance of the Union, and for the suppression of the rebellion, and that traitors ought to be punished, and all that, as any man. I do not know but he has excelled almost any other in his denunciations of treason, and in his assertion that it must be punished, &c., and that the people must be taught that treason is the crime of crimes.

But, sir, so soon as Andrew Johnson finds himself clothed with executive power and with the immense patronage of his position, and so soon as he had surveyed the political field, he says to the people of the South "All my denunciations against you are nothing but gammon. I am talking that for New England. I never mean to carry out any of my threats against you. You take care to sustain my policy, and in 1868 I will be the candidate for the Presidency. I will see that none of your necks are stretched for treason; I will see that none of you suffer; I will take care of the South if you will let me humbug the northern people by these denunciations against the offense of treason. Do this and it will all come out right."

Mr. Speaker, I believe the gentleman from Missouri [Mr. Hogan] delivered a speech on this floor a few days since, in which he challenged the Union party, or any of its representatives in this Congress, "to show wherein Andrew Johnson had been a traitor to the pledges and professions he had made during the rebellion." Is it to be expected that any one is to be gammoned by any such "gasconade" as this? Are we to be told, and is it to be believed, that Andrew Johnson occupies today the same position that he held in 1864 and has held from 1861 up to within the past few months? There is a radical difference between the Andrew Johnson of today and the Andrew Johnson of a year ago; there is also an antagonism between the men who elected him and the men who now support him. Is not Andrew Johnson today trampling upon the principles he sustained and proclaimed a year ago? I proclaim here that he is, and I will prove it by his own record. Why, sir, if the Andrew Johnson of today is the man we elected Vice President then we have most wonderfully transformed ourselves. Somebody has been transformed. Either the Democratic party that denounced him as a traitor and a scoundrel of the deepest dye has been transformed, or the Union party or Mr. Johnson has been "transmogrified." Somebody has changed—things are not now as they were. That party which recently denounced him now sustain him, from Vandalia down, filling the air with huzzahs in his praise. Unless the entire Union party has been transformed in a brief period there has a change come over the spirit of the dreams of the Democratic party, and over its actions, too. Is it the Union party or the Democratic or Andrew Johnson that has changed?

Sir, the Union party has not changed, nor has the Democratic party changed. The Democratic party is the same uncompromising foe of progress, civilization, liberty, and justice that it ever was during the rebellion, and the Union party stands today where it has always stood, undaunted and invincible, neither intimidated by threats nor seduced by patronage, the constant and untiring friend of liberty, union, and universal justice! God bless the Union party, say I!

There is nothing in common between the Democratic and the Union party. There is an antagonism which is irreconcilable between them; an antagonism as great as that between the Union party and Andrew Johnson. That antagonism does not exist between the Democratic party and the President. Andrew Johnson is doing all he can to sustain the Democratic party. He has abandoned his old friends. He has betrayed the party that gave him a name and to position among the potentates of the earth. He has betrayed the principles that he himself advocated within the past four years. He has given the lie to the sentiments which he expressed during the war on vital and important questions!

Sir, no man can make me believe, nor the Union men of this country, that the Democratic party which opposed the war, which created the Chicago platform of 1864, declaring the experiment of restoring the Union by war a failure; the party which strove to get up "a firm in the rear" of the loyal heroes fighting to put down the rebellion; no man can make me believe that that party in sustaining the Andrew Johnson of today is supporting, the Andrew Johnson of 1862, 1863, and 1864.

The Democratic party are not fools. They know that they are sustaining a man who coincides with them, and who is promoting their interests. They are using him to aggrandize their party, and when they have accomplished their ends they will drop him. And the time will come when he will be so low that there will none "so poor as to do him reverence," even in the Democratic party.

I assert that there never existed a man so exalted or so powerful that he could betray the

party that placed him in power and survive that betrayal without dishonor and disgrace. Not an instance is known in the history of the world where a man betrayed his true friends, betrayed the party that placed him in power, who did not render himself politically infamous by that act of betrayal.

If illustrations were necessary I might cite the cases of John Tyler and James Buchanan. What did either of them make by their betrayal of those who elevated them to power? They have made a history which their children (if they are so unfortunate as to have any) will weep to read. So will Andrew Johnson, if he persists in the betrayal of those who put him into power, sink to the same level with Tyler and Buchanan; he is on the down grade now,

and he will reach them if he does not soon stop.

Mr. Speaker, let us go to the record of the President of the United States and see what that proves. I have taken some little pains in the short time that I could spare from the discharge of other ditties to run over his record, and ascertain what positions he assumed and what principles he enunciated during the war, for the purpose of contrasting them with those which he has been uttering during the last six months. Let the record itself show the contrast. It will appear as well defined and as apparent as the contrast between midnight and noon-day.

I quote now from Savage's Life of Johnson, on page 231, from the speech of Andrew Johnson, as a Senator from Tennessee, in the Senate of the United States, in the year 1861:

"Mr. President, when I was interrupted by the motion to clear the galleries, I was making a general allusion to treason as defined in the Constitution of the United States, and to those who were traitors and guilty of treason within the scope and meaning of the law and the Constitution. My proposition was, that if they would show me who were guilty of the offenses I have enumerated, I would show them who were the traitors. That being done, were I the President of the United States, I would do as Thomas Jefferson did in 1806 with Aaron Burr, who was charged with treason. I would have them arrested and tried for treason, and if convicted, by the eternal God they should suffer the penalty of the law at the hands of the executioner."

Now, I can point out, to Andrew Johnson who the traitors are. And now let him dare to declare that by the eternal God he will have them tried, and if convicted he will hand them over to the executioner!

It will not satisfy me that Andrew Johnson is an honest man because he handed over to the executioner the poor miserable miscreant Wirz, and that poor unfortunate woman and three others who were one and all the mere tools of the intellectual instigators of the assassination. That was but little; they had no friends; they amounted to nothing. Andrew Johnson had no reference to such persons when he made this declaration in the Senate of the United States. No, sir; he made that declaration against the rebel leaders, against those in high position who were inaugurating this rebellion. And what has he done to fulfill that promise? "Were I President of the United States," says he. And now that he is President of the United States, clothed with the power that he seemed to desire at that time, what has he done toward the consummation of that promise? He has done nothing. He has not ordered the trial of any single man in the United States for treason.

On the other hand, he has pardoned or paroled every single traitor against this Government, with the exception, I believe, of two, perhaps but one. When it became necessary for General Humphreys, who had surrendered his sword not more than ten days before to General Sherman, to be pardoned, that he might enter upon the duties of Governor of Mississippi, here was Andrew Johnson ready to pardon him. He had not been from the battlefield three weeks before he was elected Governor of Mississippi by the returned rebel legions of that State; and Andrew Johnson at once sent him an executive pardon to enable him to enter upon the duties of that office. And I have been told that General Humphreys never as much as asked for it.

Instead of making treason odious, as he promised to do, he has done all that he well could to restore traitors to political power and to shield them from the legitimate results of their crimes. He has given them place; he has given them power; he has recognized them as being entitled to all the rights of loyal citizens under the Constitution, with here and there a solitary exception. And if I were a betting man, if I may be allowed to make use of such a phrase here, I would bet all that I have on this earth that he never will order the trial of Jeff Davis; and that if he is ever tried and convicted, Andrew Johnson will pardon him. I only wish I was as certain to live a thousand years, and enjoy health and youth, as I am that Jefferson Davis never will make expiation for his bloody crimes while Andrew Johnson is the President of the United States!

Now, let us go a little further into this record, and see whether Andrew Johnson is a man who is keeping his promises or not; and whether it is true, as he would have it, that the northern men are all crazy radicals, and have themselves "gone back" on the principles they adopted during the progress of the rebellion. In this same life of Johnson, by Savage, on page 294, Andrew Johnson is recorded as having made use of this language, in his speech at Nashville, while he was exercising the duties of military governor under commission from Abraham Lincoln:

"But in calling a convention to restore the State, who shall restore and reestablish it? Shall the man who gave his influence and his means to destroy the Government? Is he to participate in the great work of reorganization? Shall he who brought this misery upon the State of Tennessee control its destinies?"

Just listen:

"Shall he who brought this misery upon the State be permitted to control its destinies? If this be so then all this precious blood of our brave soldiers and officers so freely poured out will have been wantonly spilled."

Sir, if that language was true as regarded the State of Tennessee, is it not true in reference to every other State situated as Tennessee was. Certainly, sir; if it was wrong with regard to the local legislation of the State of Tennessee that traitors should participate in the reorganization of their local government, the same objection exists with regard to their reorganizing any other State government which they have destroyed. Will not the same objection exist with regard to traitors participating in the reorganization of the General Government in assuming its rightful jurisdiction over the rebellious States and in restoring them to the Union practically? "Rebels should not be represented in the Tennessee Legislature," but "they should be represented in the Congress of the United States." I cannot harmonize these two positions of the President. They are irreconcilable.

But Andrew Johnson does not talk today as he did then. No, sir, he is for letting all those rebels participate in the conventions and in every step toward reconstruction; and if there is any treason in the way he has a pardon in his pocket ready to band it to the man who may be embarrassed by any disability of that kind.

Let us continue the examination of the record:

"All the glorious victories won by our noble armies will go for naught and all the battlefields which have been sown with dead heroes during the rebellion will have been made memorable in vain.

"Why all this carnage and devastation? It was that treason might be put down and traitors punished.

"Therefore I say that traitors should take a back seat in the work of restoration."

Sir, if Andrew Johnson could have his way today, traitors would take a front seat in the work of restoration. He has turned square round. Then, when he was acting with the Union party, he proclaimed to the world "that traitors should take a back seat." Now he proclaims that traitors shall have a front seat. He would give them front seats in this Hall! He would introduce here the rebel horde from Mississippi, Alabama, and other insurrectionary States. He would have their names called on our rolls, and let them engage here in the work of legislation. That is what Andrew Johnson desires today.

[Here the hammer fell.]

Mr. LAWRENCE, of Pennsylvania, obtained the floor.

Mr. RANDALL, of Pennsylvania. Mr. Speaker—

Mr. LAWRENCE, of Pennsylvania. I had promised to yield to my colleague, [Mr. Randall;] but if the gentleman from Illinois [Mr. Ingersoll] is not through, I prefer to yield to him till he shall conclude. He is engaged in a business which I think ought to be finished.

Mr. INGERSOLL. I am much obliged to the gentleman for his courtesy. I shall try to be as brief as possible. I was not aware that I was occupying so much time.

Let me quote further:

"If there be but five thousand men in Tennessee loyal to the Constitution, loyal to freedom"—

Mark the language! Then he demanded that men should be loyal to freedom. That principle, like his avowals in favor of liberty and justice, he has deserted!

"If there be but five thousand men in Tennessee loyal to the Constitution, loyal to freedom, loyal to justice, these true and faithful men should control the work of reorganization and reformation absolutely."

"Loud and prolonged applause," according to this report, followed that remark. Sir, I will guaranty that not one single man who joined in that demonstration of applause, applauds Andrew Johnson today; not one, sir. Every man who applauded that sentiment denounces the course of Andrew Johnson today, denounces his apostasy from the principles expressed in that speech. The men who applaud him today are the men who denounced him then, and who, when he made that speech, hung their heads or looked defiant and sullen. Today they are patting him encouragingly and energetically on the back, and telling him that he is a second Andrew Jackson; that though he claims to be to "tribune" of the people, they are using him to advance their own proposes; and he seems not to know it; and he does not want to know it; but the true men who voted for him know it; he cannot deceive them.

It is refreshing to read the expressions of Andrew Johnson a few years ago. By virtue of such declarations as those I have read, he inspired the loyal North with confidence in his patriotism, in his integrity, in his love of universal freedom and justice to such a degree that when the patriotic Union men met in convention at Baltimore in 1864 they placed the name of Andrew Johnson upon their ticket next to that of Abraham Lincoln, and we went forth and battled for him faithfully and heroically against the same party who are denouncing us today and supporting him with the same vigor that they denounced him in 1864. This is the picture I want Andrew Johnson to look upon. It is a picture which the real friends of humanity and justice weep over.

Andrew Johnson has declared that the traitor has ceased to be a citizen; and that is the position I have taken here today, that the traitor has ceased by reason of his rebellion and treason to be a citizen; and that simply

because he failed to consummate that treason in the overthrow of the Government, he has not been restored to his citizenship, for no traitor can be restored to citizenship until the supreme legislative power of this Government so restores him:

"I say that the traitor has ceased to be a citizen, and in joining the rebellion has become a public enemy. He forfeited his right to vote with loyal men."—Andrew Johnson.

Did he, Mr. Johnson? Did the traitor forfeit his right to vote while you were Governor of Tennessee under Abraham Lincoln? If he did, how has that right been restored to him? If that right was forfeited while you were Governor, why does not that forfeiture continue till this day when you are President? Let him answer that if he can. He knows the truth is that he cannot answer it except by reaffirming his old position. The right to vote was for-

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feited by the crime of treason, and that crime has not been expiated. There has been no forgiveness, there has been no restoration of that right of citizenship, and that forfeiture continues today, so that there has not been a legal vote cast by a rebel since the inauguration of the rebellion." He forfeited his right to vote with loyal men when he sought to destroy our Government."

"We say to the most honest and industrious foreigner who comes from England or Germany to dwell among us and to add to the wealth of the country, 'Before you can be a citizen you must stay here for five years.' If we are so cautious about foreigners, who voluntarily renounce their homes to live with us, what should we say to the traitor who, although born and reared among us, has raised a parricidal hand against the Government which always protected him?"

Those were burning words, and how timely they are now. If the executive power were to carry those words into execution, Andrew Johnson would stand today among the honored men of the world, and as one of the first champions of liberty on the earth, if not the very first.

"My judgment is that he should be subjected to a severe ordeal before he is restored to citizenship."

That was said by Andrew Johnson when Governor of Tennessee. What ordeal is he subjected to before he is restored to citizenship, as Mr. Johnson now understands it? I will tell you. It is the ordeal of a trip to Washington to ask Andrew Johnson to pardon him. And that is all the ordeal he has to pass through. If he cannot get money enough to make his personal appearance, an application, I suppose, through the mail—

A Member. Or female. [Laughter.]

Mr. INGERSOLL. Yes; I have heard it said that a female was quite as effective.

Let me continue this, for it is refreshing.

"A fellow," says Mr. Johnson, in referring to a rebel. Does Andrew Johnson call one of these southern people a fellow? Oh, yes; but that was in 1862 and 1863. Now it is 'the honorable gentleman from Mississippi,' "My friends from Virginia," "The noble chivalry of the South whom I have so long and intimately known, and can so thoroughly trust." [Laughter.] But he then said:

"A fellow who takes the oath merely to save his property, and denies the validity of the oath, is a perjured man, and not to be trusted. Before these repenting rebels can be trusted let them bring forth the fruits of repentance."

If the loyal people ask Andrew Johnson to show the fruits he has gathered from repenting rebels, what can he show them? He can show them nothing but stacks of applications for pardons!

"He who helped to make all these widows and orphans, who draped the streets of Nashville in mourning, should suffer for his great crime. The work is in our own hands."

That is a good point well presented. Let it be reechoed by the people of the North, that he who helped to make these widows and orphans and drape the land in mourning should suffer for his great crime. But how does he suffer for his great crime under Andrew Johnson? By receiving a pardon with the seal of the Executive upon it or a commission to a Federal office. That is all the suffering I have heard of as yet.

"The work is in our own hands." Ah! that was true and would be today if Andrew Johnson was true to the principles he advocated a few months ago. The work is in my opinion in our own hands yet, whether he is with us or against us. We shall rely upon the steady and unflinching loyalty of the people, and Andrew Johnson though President will find when he opposes the executive power against the eternal principles of right which have been sustained by all this blood and treasure that he will be as powerless as a rush; that he will be overborne by the power of the people, and will find that the people in the right are greater and more powerful than the President in the wrong. I shall trust the people. I shall appeal from Andrew Johnson to the people, and I fear not their verdict.

They will vote for Congress as it is, and Andrew Johnson as he was!

Sir, let Andrew Johnson remember that the very people who are sustaining him today, the very men who are calling upon the country to support the President's policy, are the same men who so vehemently denounced him and hounded him but a few months ago. They are the men who were against him and all others who were fighting for the Government during the bloody years of war. None of his old friends support him now, except it may be some parasite, some lick-spittle who wants some contemptible office within his gift. They are the only ones. Every high-minded man who was for this war and this Government, for freedom and justice, is against Andrew Johnson today. Yes, sir, let him remember he could not today in the grand State of Illinois, who sent forth two hundred and fifty thousand of her sons to fight for the maintenance of the principle and sentiments he uttered in his speech at Nashville, get those men to go for him now although they voted for him in 1864. There is but one place they would go to now on his account, and that is to his political funeral. They would gladly follow him to his political grave.

Mr. Speaker, if he were a high-minded and honest man, when he finds he cannot carry out the principles of the party which placed him in power, that he cannot maintain the policy maintained by his true friends, he should resign his office. I believe we had an example of that kind in the Thirty-Eighth Congress. Mr. Stebbins, elected by the Democratic party in New York, found, when he came here, that he could not carry out the principles of the party which had elected him, and he accordingly resigned his seat like an honest man! Andrew Johnson should follow that example, and resign, for I declare that he is not carrying out nor intending to carry out the principles of the party which elected him Vice President!

But let me proceed with his speech:

"Ah, these rebel leaders have a strong personal reason for holding out—to save their necks from the halter; and these leaders must feel the power of the Government."

They did not know that he was going to be President, or that "reason for holding out" would not have existed.

That is not all. "Treason must be made odious." Is that all? "And traitors must be punished and impoverished!" In 1862 he declared they must be punished and impoverished, and now, sir, he is restoring every acre of land they enjoyed or occupied which by the military power had been turned over to the poor freedmen, taking it from them and handing back to these rebels. That is the way in which Andrew Johnson makes treason odious. Failing to make it odious by punishing southern men, he himself has made it odious by his treachery to the party and the principles of the party which placed him in power! if he is not a traitor to the Government and Constitution of the United States he is a traitor to the party which elected him Vice President, and to the sentiments which fell from his lips in 1862, and which found a welcome response in the hearts of the loyal men of the country.

Hear him again:

"Treason must be made odious, and traitors must be punished and impoverished. Their great plantations must be seized, and divided into small farms, and sold to honest, industrious men. The day for protecting the lands and negroes of these authors of rebellion is past. It is high time it was."

It was past then, and you, Andrew Johnson, should not have inaugurated a different policy. You have brought the dark days back! You have reversed the order of things. Instead of dividing up their "great plantations" and selling them to honest and industrious men, you are restoring to rebels their plantations, granting them pardons, and asking their admission into the Congress of the United States!

I now read from his speech upon the fall of Richmond:

"If we had an Andrew Jackson he would hang them as high as Haman, but as he is no more, and sleeps in his grave in his own beloved State, where traitors and treason have even insulted his tomb and the very earth that covers his remains, humble as I am when you ask me what I would do, my reply is, I would arrest them, I would try them, I would convict them, and I would hang them."

A little further on, in the same speech, he says:

"In my opinion, evil-doers should be punished. Treason is the highest crime known in the catalogue of crimes, and for him that is guilty of it, for him that is willing to lift his impious hand against the authority of the nation, I would say, death is too easy a punishment. My notion is that treason must be made odious and traitors must be punished and impoverished; their social power must be broken, and they must be made to feel the penalty of their crimes. Hence I say the halter to intelligent, influential traitors."

Suppose, sir, he should declare such sentiments today, what would be the effect? The throng that now surrounds him at the White House would disappear; the smiles of northern Democrats and the caresses of

southern rebels would cease at once.

But let us see what further he says:

"The American people must be taught, if they do not already feel, that treason is crime and must be punished; that the Government will not always bear with its enemies; that it is strong, not only to protect but to punish."

Sir, under the rule of Andrew Johnson it is neither strong to protect loyalty nor to punish treason, for he refuses both. By his vetoes of the Freedmen's Bureau bill and of the civil rights bill, he refuses that protection which he declared it was the duty of the American people to extend to the freedman and to the poor southern Unionist. And he refuses to punish traitors. He has had within his power Jefferson Davis, the head and front of the rebellion, for one year, and has not yet ordered him to trial. He refuses to punish everybody that held any leading position in connection with the rebellion.

Again, Mr. Johnson says:

"When we turn to the criminal code and examine the catalogue of crimes, we there find arson laid down as a crime, with appropriate penalty; we find there theft and robbery and murder given as crimes; and there, too, we find the last and highest of crimes, treason. With other and inferior offenses our people are familiar; but in our, peaceful history treason has been almost unknown. The people must understand that it is the blackest of crimes and will be surely punished. I make this allusion, not to excite the already exasperated feelings of the public, but to point out the principles of public justice which should guide our action at this particular juncture, and which accord with sound public morals. Let it be engraven on every heart that treason is a crime, and that traitors shall suffer its penalty. While we are appalled, overwhelmed at the fall of one man in our midst by the hand of a traitor, shall we allow men—I care not by what weapons—to attempt the life of the state with impunity? While we strain our minds to comprehend the enormity of this assassination, shall we allow the nation to be assassinated?"

Shall we allow the nation to be assassinated? That is the question that is upon us today, and if Andrew Johnson persists in the course he is now following, this nation will be in danger of assassination by the same fell power that took the life of Abraham Lincoln. They may not use the same weapon, but it will be as murderous in its effects upon the life of the nation. The pretense is the restoration of the southern States and the readmission of rebels to the Congress of the United States. Carry out the policy of Andrew Johnson, and you will restore the old order of things, if the Government is not entirely destroyed; you will have the same old slave power, the enemy of liberty and justice, ruling this nation again, which ruled it for so many years.

In a conversation with Sir Frederick Bruce, the President used this language:

"The time has come when traitors must be taught that they are criminals. The country has fairly made up its mind on this point; and it can find no more earnest agent of its will than myself."

What egotism! No more earnest agent of the people's will than himself! Has he not falsified that by every act he has done for the last six months? Why, he could not make an address two years, or even one year ago, without speaking of the odiousness of treason and the certainty of its punishment. But now, though he has not ceased to make speeches, he has ceased to talk about treason being made odious

and that rebels must be punished; he has ceased saying anything about these matters, but talks about their restoration to political power in this Government. That is the difference between Andrew Johnson of today and the Andrew Johnson of 1864.

Now, I have shown but one phase of the character and history of Andrew Johnson. Let us look for a few moments at the other phase. After he came to be the Executive of the nation, he at first almost startled the nation by his earnest denunciation of the crime of treason, and his promises in reference to the certainty of its punishment. But soon his old associates came around him. They wheedled him and flattered him and made him believe that he was a great man, and had more power than the people of the Republic who had elected him. They represented to him that all he had to do was to cut loose from the friends who had placed him in power, and accept them as his counselors, advisers, and friends, and he has done so. And now, instead of being the man entitled to the gratitude, confidence, and love of the loyal American people, he has only the support of the late rebels in arms and their sympathizers and apologists in the North.

The American people have borne a great deal; they can still bear a great deal. But it does seem to me that it is hard that we should be afflicted with the rinderpest, the trichina, the cholera, and Andrew Johnson, all in the same year. [Laughter.] Yet, with the blessing of God, I believe we shall survive all this; and that we shall exist after the

Administration of Andrew Johnson shall have ended; that we shall rise superior to it by the power of the loyal people; that we shall preserve this Government notwithstanding the mad policy of the Executive and in spite of his southern friends and his northern copperhead supporters. I believe that the day will come when the American people will show to the world that under the American Constitution treason is a crime and that traitors will be punished. But Andrew Johnson will never teach the world that lesson!

Andrew Johnson is a consummate demagogue; he is one of the most unblushing demagogues that now exist in this country. And I will prove that by his own record; by the record that he has himself made. He has been making some speeches recently, and I have only to refer to them to prove the truth of the assertion I have made. He has presented himself before the American people in his speech to the soldiers and sailors, and in his speech of the 22d of February, if you can call that a speech. He tells them how much he has done, what trials he has endured, what privations he has suffered, what hardships he has undergone, and how much property he has lost in his efforts to save the Government and the country, "and now," says he, "can you doubt my loyalty and my intentions and my good will?"

Sir, Andrew Johnson has made no sacrifices worthy of any mention, and if he has, an appreciative and grateful people would remember them without his thrusting them in their faces on every occasion. What has he suffered? He has not suffered so much as the humblest private that fought in our armies during the rebellion. The humblest private that fought at Gettysburg or in the Wilderness is entitled to more credit than is Andrew Johnson for what he has done. Has Andrew Johnson ever fought the enemy in battle? No, sir. Has he ever made an effort to find the enemy on the tented field? Never. Has he ever even smelled gunpowder? Has he ever camped on the frozen ground? Has he ever stood guard in the stormy and dreary nights numbed with the frosts of winter? Has he ever suffered any of the privations common to the soldier, or endured any of the hardships of campaign life? No, never; not even an hour!

What has Andrew Johnson suffered? He suffered being United States Senator in 1861; he has suffered being military governor of Tennessee, snugly ensconced in a mansion at Nashville, with a brigadier general's straps on his shoulders, and feasted and toasted, with sentinels pacing before his door while he was securely and quietly sleeping through the watches of the night, while others braved the dangers he never met!

And will the American people allow him to impose his infamous policy of "restoration" upon them because he claims to have suffered so much? No, sir, not even if his pretended sufferings were real. Andrew Johnson has suffered nothing worthy of remark. I will allow myself to be interrupted by any gentleman who can tell me what Andrew Johnson has suffered, unless it be that he has suffered the pangs of an uneasy conscience for his perfidy to the principles of the Union party. That kind of suffering would be good for him, and I hope he may have plenty of it. There is certainly plenty of cause and I trust it may have a good effect.

Andrew Johnson, as I was remarking, is a demagogue. In 1862, when he was in Nashville, he told the colored people that he, Andrew Johnson, military governor of Tennessee, was going to be their Moses and lead them out of the bondage of Egypt into the Canaan of liberty. He made a mistake, to say nothing more. Instead of being their Moses he has been their Pharaoh. And if I am not greatly mistaken this modern Pharaoh and his present admirers will be swallowed up and overwhelmed in the sea of popular indignation which is rising in the loyal States. Why, sir, Andrew Johnson had at one time words of cheer to the freedmen, to the negroes, who had suffered more than he ever did for the preservation of this country. Sir, of the two hundred thousand negro troops who volunteered under our flag and shouldered their muskets to do what they could for the unity of this Government and for their own liberties, there is not one of that sable host who is not more entitled to credit from the American people for what he suffered and endured than Andrew Johnson, yet he is continually reminding the people of the great sufferings and hardships he has endured. In his address to the negroes in this city the other day he made this modest statement in reference to the abolishment of slavery by the constitutional amendment:

"I feel, and know it to be so, that my efforts have contributed as much, if not more, in accomplishing this great national guarantee than those of any other living man in the United States."

Oh, sir, he had kind and cheering words for those men who marched, with the utterances of his lips still ringing in their ears, to Fort Pillow, where they were massacred, and to Port Hudson, where they fought and fell heroically. And, sir, upon the other battlefields of this war the words of Andrew Johnson encouraged and cheered them to heroic deeds. But he has no such words for them now. We have had an illustration of that fact in his late speech to the negroes in this city when they were celebrating the anniversary of their emancipation.

In that speech, which I will not quote at length, but merely state its substance, he said to those negroes that he thanked them for this token of respect to him; that they had taken the pains to come through the presidential grounds and stop at the Executive Mansion and pay their personal respects to him. He did not repeat the

declaration that he was going to be their Moses and lead them through the wilderness to the land of liberty. He did not tell them that he was going to stand by any of the pledges of the Government that they should be protected in their liberty in the States where they may live. No, sir; he made no such declaration; it would have been useless. His veto messages of the Freedmen's Bureau bill and the civil rights bill, the very measures of this Congress calculated to insure that protection, would have been witnesses against him.

In his letter to Governor Sharkey of August 15, 1865, he said:

"If you could extend the elective franchise to all persons of color who can read the Constitution of the United States in English, and write their names, and to all persons of color who own real estate valued at not less than \$250, and pay taxes thereon, you would completely disarm the adversary, and set an example the other States will follow. This you can do with perfect safety, and you thus place the southern States, in reference to free persons of color, upon the same basis with the free States."

This was encouraging to the poor souls who had worn the galling chains of bondage all their weary lives. But we hear nothing of this kind in his late speech.

In this speech he simply tells them, as he has often said before; what he has suffered and what he has done, and begs them to take upon credit the assertion that he will turn out some day to be their best friend. Well, sir, I do not believe in those who are friends on credit. I like a man who is a friend at the time when you need him; and if there ever was, in the history of this Government, a time when the loyal black people of this country—and they are all loyal—needed a friend it is now, when the South, being relieved from the military power of the Government, will seek to again enslave them, not perhaps by a sale on the auction-block as in the olden time, but by vagrant laws and other laws and regulations concerning the freedmen, which subject them to a surveillance, and will eventually subject them to a servitude little less degrading and no less galling than the old chains of slavery which they wore so long. Here is what the "restored" State of Mississippi has done already in this regard:

"1. 'An act to regulate the relation of master and apprentice, as relates to freedmen, freed negroes, and mulattoes.'

"2. 'An act to amend the vagrant laws of the State.'

"3. 'An act to punish certain offenses therein named, and for other purposes.'

In the third act, section four is as follows:

"Be it further enacted, That all the penal and criminal laws now in force in this State, defining offenses and describing the modes of punishment for crimes and misdemeanors committed by slaves, free negroes, or mulattoes, be, and the same are hereby, reenacted and declared to be in full force and effect against freedmen, free negroes, and mulattoes, except so far as the mode and manner of trial and punishment have been changed or altered by law."

Some of the 'penal and criminal laws' which have been reenacted for the freedmen are as follows:

"Article fifty-eight, section eleven, page 248, Revised Code, makes it punishable with death for a negro to murder, commit rape, burn houses, commit robbery, or attempt to commit such crimes. White persons are not punishable with death for most of the offenses mentioned in this section, nor for the attempt to commit any one of them.

"Article forty-five, of the above named act page 245, provides that a slave shall receive twenty lashes if he be found away from the place of his employment without a pass. This is reenacted for freedmen.

"Article forty-six, page 246, awards thirty-nine lashes to the slave for buying or selling without written permission. Reenacted for the freedmen.

"Article four hundred and seventy-six, page 24, allows civil officers and others to appropriate to their own use any article a slave may be seeking to sell. Reenacted for the freedmen.

"Article fifty-one, page 247, makes it punishable for negroes to congregate at night, or hold schools, &c. Reenacted as above.

"Article sixty-three, page 249. Both ears are to be cut off for false witness. (No white ears to be served so.) Reenacted as above."

Here you have a fair sample of the legislation of a State which has "accepted the situation." Is such a State fit to be represented now in Congress? Let the loyal people answer!

Sir, the laws which have been passed by the southern States in reference to the freedmen are of the most degrading and oppressive character. I have given one sample; let that do for all; I have no time to present any more to the House. Many of those States have reenacted, it may be said, their old code of slave laws, simply striking out the word "slaves" and inserting the words "freedmen," "persons of color," "mulatto," &c., and giving them no more rights than if they were still chattels. So it would be in every single southern State, unless by the

strong arm of this Government you protect the black man who aided in the preservation of your liberties, who aided in the preservation of the Republic, and the preservation of that Constitution which is now being sought to be used as an instrument for their oppression by the Executive of the United States!

He tells us that the passage of these laws for their protection was unconstitutional. Sir,

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has it come to this, that to protect the citizen's liberty under a republican form of government is unconstitutional? If it has, we had better have a new Constitution. I believe that it is one of the inherent powers of Government to protect the citizen in the enjoyment of his liberty and in the security of person and in the rights of property, independent of all constitutions. It is an inherent power, a power that dwells in government without any written law—that in the language of the Constitution, that instrument was framed by the people of the United States in order "to establish justice," "insure domestic tranquility," "provide for the common defense," "promote the general welfare, and secure the blessings of liberty," &c. Will it be said that it must be written in express terms in the Constitution, otherwise the Congress has no power to protect its citizens, without respect to color or race, in the enjoyment of that liberty said to be the prime object in founding the Government? No, sir, it is but the makeshift of the demagogue. It is a bid for the Presidency in 1868. It is a crumb—no, not a crumb, but a whole loaf—thrown to the southern people for their support in the convention of 1868.

We now have two great prestidigitators on the political tapis, performing all sorts of lofty tumbling in endeavoring to win the admiration of the Democratic convention (to be) in 1868. I will not say that the gentlemen to whom I refer are Andrew Johnson and William H. Seward, for no one would suppose that Seward, with his "higher-law" and "irrepressible-conflict" doctrines of the past, would stand a ghost of a chance, and he will not. The South will never touch him.

The other gentleman, in fact, stands no better chance than Seward. He has betrayed one party that trusted him, and no other party will ever give him a chance for a second betrayal. But the race between the two, their throwing of crumbs, and in fact whole loaves, to their southern friends, is quite amusing, and in the end, may be instructive. I have not the least confidence in the political probity of either of them.

Mr. LAWRENCE, of Pennsylvania. I am willing that the gentleman from Illinois shall proceed with his speech, provided I shall have the floor when he gets through.

Mr. RANDALL, of Pennsylvania. I move that my colleague have his full hour after the gentleman from Illinois has concluded his speech.

There was no objection, and it was ordered accordingly.

Mr. INGERSOLL. I am obliged to my friends from Pennsylvania for their consideration.

Mr. LAWRENCE, of Pennsylvania. I desire to state that the subject upon which I shall speak is a dry one—the subject of the tariff—and will not interest the House as much as the one which the gentleman from Illinois is making. I have no desire to interfere with the enjoyment the House has in hearing the gentleman from Illinois.

Mr. INGERSOLL. Mr. Speaker, the truth is that the people are not so simple or so easily deceived as these gentlemen in high positions suppose. This game they are playing will be uncovered, it will be detected by the people and condemned. Their whole game involves an apostasy and an abandonment of the principles which they once announced, and which we, in common with them, believed and sustained, and yet believe and sustain.

Now, a word about this question of representation. I leave it to any gentleman on the other side of the House who is with the President on his reconstruction policy, whether or not, it is not held by him, and by those who support him, that the southern States are entitled to representation without conditions; that we have no right to impose conditions on the South precedent to their being represented in this Congress. That is their position, and that all you can ask is, whether the representatives can take the oath prescribed by law. Now that I have stated the question fairly, let me ask, when did this right of representation accrue to the southern States lately in rebellion? Was it last month or six months ago, or when was it?

I hold this to be the position of the Union party on that question—although I am unauthorized to speak for any but myself—that if the southern States are entitled to representation in Congress today they were entitled to representation in Congress the very day after the surrender of the rebel armies. What has been done to clothe them with rights with which they were not clothed on the cessation of hostilities? Nothing has been done by Congress giving them this right. Has the President a right to clothe the States with new powers? Or has he the constitutional right to restore powers once lost? That belongs to the legislative department of the Government, and not to the executive. Where under the Constitution does he get any legislative power? No-where. He claims that peace exists. Why? Because the rebels have ceased to fight; because their armies have been disbanded; because the rebel

power has been crushed. Not by any act of Congress does peace exist, but simply by reason of the close of the war.

Does that fact give the right to these people of the southern States to representation? The President and the Democratic party say that it does. I deny it. It gives them no such right. If they had any right after the surrender of Lee, it was not by virtue of any action of the President. He can confer no such right upon them.

Mr. RANDALL, of Pennsylvania. Does the gentleman want an answer to that question?

Mr. INGERSOLL. I am going to answer it myself: The Constitution clothes the President with no such power. He cannot make a citizen of an alien. He cannot make a naturalization law. Those people in the southern States became aliens by virtue of their rebellion and treason, and he cannot restore them to citizenship. It requires a greater than he. The legislative power of the country is the only power that can restore them to citizenship, the right of which they have forfeited.

Then what follows? Unless the rebels were entitled to representation in Congress immediately upon the surrender of the rebel army they are not entitled to it today unless Congress has intervened and by appropriate legislation has given them that right, and we all know that Congress has done nothing of the kind.

And here let me say that the President himself once recognized the fact that the rebels lost their political rights; that their State governments had ceased to exist by reason of their rebellion and treason; that they had no power inherent in themselves to resuscitate those governments; that they were no longer citizens of the United States but were alien enemies, conquered by the Federal power. That was his position less than one year ago, as I will prove.

The present President recognized the effect of the rebellion upon the southern people in the forfeiture of their political and civil rights by stepping in, in the absence of Congress, and proclaiming to these men what to do, and directing them to do it; by appointing over them provisional governors; by pardoning rebels for the purpose of making them Governors; by instructing them how to exercise the duties of their office; by telling them to call the people together in convention, and what kind of a constitution to make; by declaring who should and who should not vote, who should and who should not hold office; in short, by directing from beginning to end what the people should and what they should not do. What was that but a clear recognition of the forfeiture of their political and civil rights?

Now, I maintain that if the States wherein he exercised that power were States within the Union, or in the Union as he now claims they were, and that they were never out of the Union, then he was a usurper, an invader of State rights in undertaking to control them in the slightest degree. If they were States in the Union by what authority did he go into them and do what he did? It was in violation of their constitutions that existed prior to the rebellion. He set those State constitutions aside, he disregarded them; he called new conventions without authority of State laws, simply as the executive head of this nation, without any authority expressed in the Constitution, and against the constitutional rights of the States thus invaded. If they were States in the Union, and entitled at that time to representation in Congress, he had no more authority to go there and revamp their old constitutions, or refurbish them, or dictate new laws and designate men to execute those laws in South Carolina, Georgia, and Mississippi, than he had in Wisconsin, Indiana, and Illinois. He would not dare to go into any of the northern States and tell the people to call a convention, saying that such a portion were citizens and entitled to vote, and such a portion not, and calling upon them to incorporate such and such provisions and expunge others from their State constitutions. He would be denounced as a usurper for undertaking to do such an act, and would be hung as a traitor unless he could find a pardoning power like that he exercises now.

Upon his own hypothesis, he has no more right to invade a rebel State than a loyal one, and every proclamation he has made and every act he has done in regard to the southern States since the cessation of hostilities has been a violation of their rights under the Constitution of the United States.

But I believe that he has not been a usurper to the extent that his own position indicates. He says they are entitled to representation *now*. So does the party that supports him. We say, on the other hand, that the men who sought to destroy this Government have no right to a voice in making the laws which direct the manner or mode of reconstructing their States.

Sir, it is a principle which the world will acquiesce in, which the people of this country will sustain, that the heroic people of the loyal States, who subdued this rebellion, shall, through their representatives in Congress, dictate the terms upon which the southern people shall be represented in Congress. And we must stand by that principle, for I would not give a rush for the Government, unless it can be preserved by the heroic and persistent effort of the northern people from the overwhelming ruin which these southern men would inevitably bring upon it if they should now be permitted to assume control of national affairs. Restore these unrepentant sinners to

Congress, with Andrew Johnson standing by them, and with the support of those who are here ready to receive them with open arms, and your country will be on the down grade to certain destruction.

Why, sir, do you suppose that the people we have subjugated are coming here to Congress to vote a repudiation of their debt? Do you imagine that they are going to forget their own rebel soldiers who have been disabled in the war, or the widows and orphans of their own soldiers? Think you they are going to vote for a constitutional prohibition upon the claims of their own people, who sacrificed their treasure and their blood in the war against this Government? No! every man of them will vote to assume the rebel debt and pension the disabled rebel soldiers, and the widows and children of those who lost their lives in the rebel cause, and pay for the property that has been destroyed by our armies that marched through the South.

And when Congress votes to do all that the bankruptcy of this Government is achieved, your own loyal debt is repudiated, and the credit of your Government is annihilated. You will no longer be able to pay the pensions to your own disabled soldiers, or the widows and orphans that have been caused by this war. The vote of the southern Representatives will impoverish your Treasury and wide-spread ruin will follow. Loyal men of the North, are you

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prepared to welcome the rebel States into your Congress *now*?

God forbid that that day should come. The loyal people of this country have suffered too much to endure that humiliation and disgrace. I appeal not to Andrew Johnson, because I feel that it would be appealing in vain. I appeal to the people to stand by their Representatives until we have put it beyond the power of the rebels of the South and their northern sympathizers to destroy this Government. And let us, the Representatives of the people, legislate for the interest of the country and of freedom. We must place such safeguards around this Government as shall secure its perpetuity, its grandeur, and its glory for all coming time.

Wait a little while, gentlemen on the other side. Do not be too anxious to allow this southern Samson to put his hands upon the pillars of this temple. You, too, may be crushed in the ruin as well as we. For your own sakes as well as ours let these southern Representatives stay out a little while until loyalty in their States gets a better foothold; until they shall send loyal men here; and if they have not the inherent sense of justice to do justice themselves, let us impose upon them such constitutional obligations as shall require them to do justice to all men, of all conditions, the low as well as the high ; as shall require them to maintain a republican form of State government. Then, sir, I would admit them, but not till then. But till then let the same heroism, devotion, patriotism, and courage control and direct the legislation of the country for the preservation of that Government and that Constitution which has been saved by the indescribable valor of half a million heroes now sleeping their last sleep, and by that million of veteran survivors who are among us to remind us of their heroism and courage, and then not only will the present generation bless you, but future generations will treasure up your acts in grateful hearts, and God Himself will also add His blessing.

Mr. LAWRENCE, of Pennsylvania, obtained the floor.

Mr. RANDALL, of Pennsylvania. Will my colleague yield to me for a few moments?

Mr. LAWRENCE, of Pennsylvania. For how long?

Mr. RANDALL, of Pennsylvania. I think not more than five minutes.

Mr. LAWRENCE, of Pennsylvania. I will yield for that time.

Mr. RANDALL, of Pennsylvania. I have listened to the vehement declarations of the gentleman from Illinois [Mr. INGERSOLL] against the President.

Mr. ELDRIDGE. Will my friend from Pennsylvania [Mr. RANDALL] allow me to ask a question of the gentleman from Illinois, [Mr. INGERSOLL?]

Mr. RANDALL, of Pennsylvania. I have no objection, so far as I am concerned.

Mr. ELDRIDGE. The gentleman from Illinois [Mr. INGERSOLL] has animadverted pretty severely upon the President on account of some alleged change of opinions. I desire to have read a passage from the Peoria Weekly Democrat, and then inquire of the gentleman if he has not somewhat changed his opinions.

Mr. INGERSOLL. Is that a copperhead paper?

Mr. ELDRIDGE. I suppose you would call it so.

Mr. INGERSOLL. I deny its authority *in toto*. I would just exactly as soon—

Mr. ELDRIDGE. I do not want to be interrupted by the gentleman from Illinois.

Mr. INGERSOLL. Very well.

Mr. LAWRENCE, of Pennsylvania. I would suggest that I yielded only to my colleague, [Mr. RANDALL.]

Mr. ELDRIDGE. Then I would ask the gentleman from Pennsylvania [Mr. RANDALL] to have this read.
Mr. RANDALL, of Pennsylvania. At the request of my friend from Wisconsin [Mr. ELDRIDGE] I will ask the Clerk to read the extract referred to. I am not responsible for it in any respect, for I do not know what it is.

The Clerk read as follows:

"Soon after the first battle of Bull Run he ventured out as far as Fairfax Courthouse, and there was made acquainted with some of his secesh friends. On his return to Peoria he declared in substance that 'the people of Virginia were the noblest men of God's creation, and that the Government might as well attempt to pluck the stars from the heavens as to crush them, fighting, us they believed they were, for their rights and liberties.'

"About three weeks before the last nomination of Mr. Lovejoy to Congress, Mr. Ingersoll stated that his defeat by a conservative man would be worth fifty thousand men to the cause of the Union.' "

Mr. INGERSOLL. Will the gentleman from Pennsylvania [Mr. RANDALL] allow me a moment?

Mr. RANDALL, of Pennsylvania. After I get through the gentleman can answer that.

Mr. INGERSOLL. I want to answer it now, just where it is read.

Mr. RANDALL, of Pennsylvania. Very well; I will yield if my colleague [Mr. LAWRENCE] is willing, for I hold the floor by his courtesy.

Mr. LAWRENCE, of Pennsylvania. I am willing that the gentleman from Illinois [Mr. INGERSOLL] should have a short time to reply to what has been read.

Mr. INGERSOLL. I suppose this paper, from which the Clerk has read, is the copper-head paper of my town, Peoria.

Mr. ELDRIDGE. It is the paper that supported the Union during the war, and now supports the Union and Andrew Johnson. It is the organ of the party that has just succeeded in carrying the election in that town.

Mr. INGERSOLL. The same old copper-head paper?

Mr. ELDRIDGE. The same old paper.

Mr. INGERSOLL. I supposed it was the same old paper. I have been used to being vilified and abused by that little, mean, dirty, despicable sheet; a mean, miserable, dirty, lying, contemptible party paper of the meanest, most contemptible, and lowest stripe imaginable. It is a paper that cannot be excelled in meanness and lying and slandering in regard to the Union cause and Union men by any paper in rebeledom during the entire war. It is a filthy, dirty, lying—

Mr. ELDRIDGE. Does the gentleman deny the statement in that paper?

Mr. INGERSOLL. I do not yield to the gentleman from Wisconsin [Mr. ELDRIDGE] just now. Sir, the statement which has just been read, whether contained in that paper or in any other, is false from beginning to end. I never saw one of these Virginia rebels during the war, to my knowledge; never. If I had, and the occasion had offered, I should have said to him what I have said today. My utterances would have been just the same as they were in 1802, when, as a candidate for Congress for the State at large on her Union ticket, I received the abuse and vilification of that same contemptible, blackguard, copper-head, Andrew Johnson paper, [laughter,] just as I receive it today. I then canvassed the State of Illinois, and met with just such slanders, not only from that paper but from the Memphis Avalanche and the Richmond Enquirer. They are all of a stripe and seek the same end, the elevation of the copperhead party to power, even, if need be, it is upon the ruins of the Republic.

Sir, never since the first utterances of treason in this country have my lips ever uttered one word, except in encouragement of the loyal North in their efforts to suppress the rebellion, and in denunciation of treason wherever it has reared its head, whether it be in the Halls of Congress, in the representative capacity of gentlemen who come here from northern States, or whether it be in the northern press, or where ever it may have been. I have been an uncompromising foe of every enemy of the Government, of every enemy of the Union party, whether he has been engaged in lauding Vallandigham or organizing Golden Circles throughout the northern States, or whether he had nothing better to do than to vilify the soldiers that were fighting for the holiest of causes by calling them "Lincoln hirelings." My voice has ever been for the Union and those who have fought for it. I wish I could say as much for the gentleman from Wisconsin, [Mr. ELDRIDGE.]

Mr. RANDALL, of Pennsylvania. Mr. Speaker, I have listened today with some interest to the vehement declamation of the gentleman from Illinois against the President. The gentleman has drawn his sword against the President, perhaps never to be sheathed until death ensues. I do not mean death by atrocious assassination; I mean political death only. I am not the defender of the President. He needs no defender. I judge that he is quite able, and I trust that he will be quite ready to defend himself against this strong, and I must add vindictive, bill of indictment against him. The characteristics which he has displayed in former life would give reason to expect that he will exhibit the same characteristics again.

But, sir, I rise as a friend of fair play. The distinguished gentleman from Illinois has charged the President of the United States with the desertion of the principles upon which he was elected. I desire to present here the Baltimore platform upon which Andrew Johnson was elected, so that those who read the gentleman's remarks may be able to judge of their truth and to decide for themselves who has adhered to that platform and who has not.

The Baltimore platform is as follows:

Resolved, That it is the highest duty of every American citizen to maintain against all their enemies the integrity of the Union and the paramount authority of the Constitution and laws of the United States; and that, laying aside all differences of political opinions, we pledge ourselves as Union men, animated by a common sentiment, and aiming at a common object, to do everything in our power to aid the Government in quelling by force of arms the rebellion now raging against its authority, and in bringing to the punishment due to their crimes the rebels and traitors arrayed against it.

Resolved, That we approve the determination of the Government of the United States not to compromise with rebels, nor to offer any terms of peace except such as may be based upon an "unconditional surrender" of their hostility and its return to their just allegiance to the Constitution and laws of the United States, and that we call upon the Government to maintain this position, and to prosecute the war with the utmost possible vigor to the complete suppression of the rebellion, in full reliance upon the self-sacrifice, the patriotism, the heroic valor, and the undying devotion of the American people to the country and its free institutions.

Resolved, That as slavery was the cause, and now constitutes the strength of this rebellion, and as it must be always and everywhere hostile to the principles of republican government, justice and the national safety demand its utter and complete extirpation from the soil of the Republic; and that we uphold and maintain the acts and proclamations by which the Government, in its own defense, has aimed a death blow at this gigantic evil. We are in favor, furthermore, of such an amendment to the Constitution, to be made by the people in conformity with its provisions, as shall terminate and forever prohibit the existence of slavery within the limits of the jurisdiction of the United States.

Resolved, That the thanks of the American people are due to the soldiers and sailors of the Army and Navy, who have periled their lives in defense of their country, and in vindication of the honor of the flag; that the nation owes to them some permanent recognition of their patriotism and valor, and ample and permanent provision for those of their survivors who have received disabling and honorable wounds in the service of the country, and that the memories of those who have fallen in its defense shall be held in grateful and everlasting remembrance.

Resolved, That we approve and applaud the practical wisdom, the unselfish patriotism, and unswerving fidelity to the Constitution and the principles of American liberty with which Abraham Lincoln has discharged under circumstances of unparalleled difficulty the great duties and responsibilities of the presidential office; that we approve and indorse, as demanded by the emergency and essential to the preservation of the nation, and as within the Constitution, the measures and acts which he has adopted to defend the nation against its open and secret foes; that we approve especially the proclamation of emancipation, and the employment as Union soldiers of men heretofore held in slavery; and that we have full confidence in his determination to carry these and all other constitutional measures essential to the salvation of the country into full and complete effect.

Resolved, That we deem it essential to the general welfare that harmony should prevail in the national councils, and we regard as worthy of public confidence and official trust those only who cordially indorse the principles proclaimed in these resolutions, and which should characterize the administration of the Government.

Resolved, That the Government owes to all men employed in its armies, without regard to distinction of color, the full protection of the laws of war; and that any violation of these laws, or of the usages of

civilized nations in the time of war by the rebels now in arms, should be made the subject of full and prompt redress.

Resolved, That the foreign immigration, which in the past has added so much to the wealth and development of the resources and increase of power to this nation, the asylum of the oppressed of all nations, should be fostered and encouraged by a liberal and just policy.

Resolved, That we are in favor of the speedy construction of a railroad to the Pacific.

Resolved, That the national faith, pledged for the redemption of the public debt, must be kept inviolate; and that for this purpose we recommend economy and rigid responsibility in the public expenditures, and a vigorous and just system of taxation; that it is the duty of every loyal State to sustain the credit and promote the use of the national currency.

Resolved, That we approve the position taken by the Government that the people of the United States never regarded with indifference the attempt of any European Power to overthrow by force, or to supplant by fraud, the institutions of any republican Government on the western continent; and that they view with extreme jealousy, as menacing to the peace and independence of this our country, the efforts of any such Power to obtain new footholds for monarchical Governments, sustained by foreign military force, in near proximity to the United States.

Mr. Speaker, I would be glad to present here, if I had it by me, the Chicago platform of 1860, in order to show the gentleman from Illinois his own inconsistencies and those of the party to which he belongs.

Mr. INGERSOLL. Does not the gentleman mean the Chicago platform of 1864?

Mr. RANDALL, of Pennsylvania. No, sir; I mean the Chicago platform of 1860, on which Mr. Lincoln was nominated, and in which a just maintenance of the rights of the States is announced as a distinct principle to which the party is pledged.

So much, sir, for the inconsistencies of the gentleman's party. Now, as to the question which he asks whether we were in favor of admitting Representatives from the South, and when that right of representation ceased, if it ever ceased. Sir, I maintain that the right of representation as belonging to the loyal people of the South has never ceased. The gentleman himself must be aware that, upon this principle Representatives from the State of Tennessee were admitted here in the Thirty-Seventh Congress, one of those Representatives being one of the gentlemen who are now claiming seats upon this floor as Representatives from that State. Sir, if those three Representatives, after the State of Tennessee had seceded, had a right to come here and be admitted as Representatives of the loyal people of the State of Tennessee, when and why did that right cease? Representatives from the State of Virginia were also admitted by the same Congress. If Virginia had the right to be represented in that Congress, when and how did her right of representation cease?

Mr. INGERSOLL. If I understand the gentleman, he claims that he is now supporting Andrew Johnson's policy.

Mr. RANDALL, of Pennsylvania. I have not claimed anything with reference to supporting Andrew Johnson.

Mr. INGERSOLL. Well, the gentleman does claim that Andrew Johnson has not changed his political principles.

Mr. RANDALL, of Pennsylvania. I have referred the gentleman to the Baltimore platform, which, I hold, corresponds precisely with the line of policy which was pursued with reference to "restoration" by Mr. Lincoln during the entire period of his Presidency, and which, if I have understood correctly the declaration of the Secretary of War, Mr. Lincoln would have continued to follow, had he lived. And that platform is in entire harmony with the policy now pursued by Andrew Johnson. So far as I am able to judge, his course in the work of restoration presents no inconsistency with the Baltimore platform or with his letter of acceptance written in response to his nomination at Baltimore.

Sir, that letter of acceptance was as follows:

NASHVILLE, TENNESSEE, July 2, 1864.

GENTLEMEN: Your communication of the 9th ultimo, informing me of my nomination for the Vice Presidency of the United States, by the National Union Convention hold at Baltimore, and inclosing a copy of the resolutions adopted by that body, was not received until the 25th ultimo.

A reply on my part had been previously made to the action of the convention in presenting my name, in a speech delivered in this city, on the evening succeeding the day of the adjournment of the convention, in which indicated my acceptance of the distinguished honor conferred by that body, and defined the grounds upon which that acceptance was based, substantially saying what I now have to say. From the comments made upon that speech by the various presses of the country, to which my attention has been directed, I consider it to be regarded as a full acceptance.

In view, however, of the desire expressed in your communication, I will more fully allude to a few points that have been heretofore presented. My opinion on the leading questions at present agitating and distracting the public mind, and especially in reference to the rebellion now being waged against the Government and authority of the United States, I presume, are generally understood. Before the southern people assumed a belligerent attitude, (and frequently since) I took occasion most frankly to declare the

views I then entertained in relation to the wicked purposes of the southern politicians. They have since undergone but little if any change. Time and subsequent events have rather confirmed than diminished my confidence in their correctness.

At the beginning of this great struggle I entertained the same opinion of it I do now, and in my place in the Senate, I denounced it as treason worthy the punishment of death, and warned the Government and people of the impending danger. But my voice was not heard or counsel heeded until it was too late to avert the storm. It still continued to gather over us without molestation from the authorities at Washington until at length it broke with all its fury upon the country. And now, if we would save the Government from being overwhelmed by it, we must meet it in the true spirit of patriotism, and bring traitors to the punishment due their crime, and by force of arms crush out and subdue the last vestige of rebel authority in every State. I felt then, as now, that the destruction of the Government was deliberately determined upon by wicked and designing conspirators, whose lives and fortunes were pledged to carry it out, and that no compromise, short of an unconditional recognition of the independence of the southern States could have been, or could now be, proposed which they would accept. The clamor for "southern rights," as the rebel journals were pleased to designate their rallying cry, was not to secure their assumed rights in the Union and under the Constitution, but to disrupt the Government, and establish an independent organization based upon slavery which they could at all times control.

The separation of the Government has for years been the cherished purpose of the southern leaders. Baffled in 1832 by the stern, patriotic heroism of Andrew Jackson, they sullenly acquiesced, only to mature their diabolical schemes and await the recurrence of a more favorable opportunity to execute them. Then the pretext was the tariff, and Jackson, after foiling their schemes of nullification and disunion, with prophetic perspicacity, warned the country against the renewal of their efforts to dismember the Government.

In a letter dated May 1, 1833, to Rev. A. J. Crawford, after demonstrating the heartless insincerity of the southern nullifiers, he said:

"Therefore the tariff was only a pretext, and disunion and a southern confederacy the real object. The next pretext will be the negro or slavery question."

Time has fully verified this prediction, and we have now not only "the negro, or slavery question" as the pretext, but the real cause of the rebellion; and both must go down together. It is vain to attempt to reconstruct the Union with the distracting element of slavery in it. Experience has demonstrated its incompatibility with free and republican Governments, and it would be unwise and unjust longer to continue it as one of the institutions of the country. While it remained subordinate to the Constitution and laws of the United States I yielded to it my support, but when it became rebellious and attempted to rise above the Government and control its action, I threw my humble influence against it.

The authority of the Government is supreme, and will admit of no rivalry. No institution can rise above it, whether it, be slavery or any other organized power. In our happy form of government all must be subordinate to the will of the people, when reflected through the Constitution and laws made pursuant thereto, State or Federal. This great principle lies at the foundation of every Government, and cannot be disregarded without the destruction of the Government itself. In the support and practice of correct principles we can never reach wrong results, and by rigorously adhering to this great fundamental truth the end will be the preservation of the Union and the overthrow of an institution which has made war upon and attempted the destruction of the Government itself.

The mode by which this great change—the emancipation of the slave—can be effected, is properly found in the power to amend the Constitution of the United States. This plan is effectual and of no doubtful authority; and while it does not contravene the timely exercise of the war power by the President in his emancipation proclamation, it comes stamped with the authority of the people themselves, acting in accordance with the written rule of the supreme law of the land, and must, therefore, give more general satisfaction and quietude to the distracted public mind.

By recurring to the principles contained in the resolutions so unanimously adopted by the convention I find that they substantially accord with my public acts and opinions heretofore made known and expressed, and are therefore most cordially indorsed and approved; and the nomination having been conferred without any solicitation on my part it is with the greater pleasure accepted.

In accepting the nomination, I might here close, but I cannot forego the opportunity of saying to my old friends of the Democratic party proper, with whom I have so long and pleasantly been associated,

that the hour has now come when that great party can justly vindicate its devotion to true democratic policy and measures of expediency. The war is a war of great principles. It involves the supremacy and life of the Government itself. If the rebellion triumphs, free government North and South fails. If on the other hand, the Government is successful, as I do not doubt, its destiny is fixed, its basis permanent and enduring, and its career of honor and glory just begun. In a great contest like this for the existence of free government, the path of duty is patriotism and principle. Minor considerations and questions of administrative policy should give way to the higher duty of first preserving the Government, and then there will be time enough to wrangle over the men and measures pertaining to its administration.

This is not the hour for strife and division among ourselves. Such differences of opinion only encourage the enemy, prolong the war, and waste the country. Unity of action and concentration of power should be our watchword and rallying cry. This accomplished, the time will rapidly approach when their armies in the field—the great power of rebellion—will be broken and crushed by our gallant officers and brave soldiers, and ere long they will return to their homes and firesides to resume again the avocations of peace with the proud consciousness that they have aided in the noble work of reestablishing upon a surer and more permanent basis the great temple of American freedom.

I am, gentlemen, with sentiments of high regard, yours truly,

ANDREW JOHNSON.

Hon. William Dennison, Chairman, and others, Committee of the National Union Convention.

Mr. INGERSOLL. I will show the reason why I ask permission to put a question to the gentleman from Pennsylvania. I will state what I understand him to state: that Andrew Johnson had not changed from the platform of the party upon which he was elected in 1864; but the party who elected him then, and oppose him now, has changed.

Mr. RANDALL, of Pennsylvania. Yes, sir, I think you have changed; that your party has shown the cloven foot; that they never expressed any purpose before the people to do what they have since done.

Mr. INGERSOLL. Has not your party changed in so far that your party opposed Andrew Johnson in 1864?

Mr. RANDALL, of Pennsylvania. The gentleman has a Yankee way of answering one question by asking another. [Laughter.] If the gentleman will answer my question perhaps he may have a right to ask another.

One remark more and I will yield the floor. I want to say there are but two positions to occupy, according to my apprehension, as to the question of the restoration of the Union, the principle enunciated by the chairman of the Committee on Appropriations [Mr. STEVENS] at an early part of this session, that these States are conquered provinces and we can therefore do what we please with them; and on the other hand, the Constitution of the United States and the decision of the Supreme Court, as delivered by Judge Grier, which the gentleman from Illinois [Mr. Ingersoll.] himself has quoted today to sustain his argument, in which that court determined that these States had not by reason of the treason of any individual in any manner been interfered with in their status as States. That is the gentleman's own decision of which he quotes, and that is the decision of the highest tribunal known to the country.

And I now say, as an humble member of the Democratic party, so far as I have been able to judge, it represents the conservative sentiment of the country. I claim to be a conservative Democrat myself, and not such a Democrat as the gentleman has described, not such as the gentleman would charge with treason, for, on the contrary, I represent a Democracy as loyal as the gentleman from Illinois. I represent, sir, a people who went with as much zeal and perhaps as far as the gentleman from Illinois in bearing arms to put down this rebellion. I am not a defender of rebellion in any particular. I am against anybody who seeks to overthrow the Government or the Constitution; and while I was in favor of putting down the rebellion when it emanated from the South, I am now today in favor of preventing the success and for putting down that party which seeks to change,

to annul, and to destroy the Constitution and to centralize this Government, and thereby to take away from the people the privileges which that Constitution formed by our forefathers gave to them. The gentleman from Illinois belongs to that party, and he will allow me to say, a party which does not seek any immediate restoration of this Union. They find that Andrew Johnson seeks that restoration in good faith.

His spirit of loyalty and fidelity to the Constitution is far different from that evinced by the Republican party. It is far different from that spirit of the gentleman's party which pressed through hurriedly the admission of the State of Colorado with two Senators in the other branch of Congress, simply because those two Senators will

make up the two-thirds vote in the Senate and enable the Opposition party to be equal to any emergency against the conduct of the President in defending the Constitution of the United States. Yes, sir, that State was admitted into the Union, so far as the votes of the two Houses can go, when it has not as many inhabitants, I venture to say, as there are voters in my own district.

That is the party against which we are arrayed. It is the party which the people must overthrow before they can expect any full restoration of this Government. We can never have a continued peace until the principles embodied by Andrew Johnson in his veto of the Freedmen's Bureau bill, his veto of the civil rights bill, and his speech of the 22d of February last shall guide this country in a restoration of the Union of these States.

Mr. LAWRENCE, of Pennsylvania. I like that Christian virtue called patience, and have tried to exercise it toward my friend over the way.

Mr. RANDALL, of Pennsylvania. I am much obliged to the gentleman for his kindness. I knew his patience and his kindness of old, but perhaps I have encroached upon them too much.

Mr. LAWRENCE, of Pennsylvania. Not at all. I yielded more readily to the gentleman because he claimed to represent the Democratic party, and I wanted him to have the privilege of defending his friends, as he has done.

Now, Mr. Speaker, with the gentleman's permission, before I enter, upon the subject which I intend to discuss, I propose to ask him a question in reference to the very subject he has adverted to. The gentleman says, and I do not controvert it, that he comes from a loyal district in Pennsylvania, and that his constituency are as loyal as that of the gentleman from Illinois, [Mr. Ingersoll] I want him to tell this house whether he supports today the Democratic candidate in Pennsylvania for Governor, Heister Clymer.

Mr. RANDALL, of Pennsylvania. I do; and I expect to do so with all my heart, because I believe his election will aid in the restoration of the Union.

Mr. LAWRENCE, of Pennsylvania. I only wanted a categorical answer.

Mr. RANDALL, of Pennsylvania. You have got it.

Mr. LAWRENCE, of Pennsylvania. I will now refer to a scene which has come up vividly before my mind since my friend from Illinois [Mr. Ingersoll] commenced his speech—a scene which occurred three years ago or more in the Senate of Pennsylvania—when I heard Andrew Johnson slandered and vilified more than I ever heard any man abused in a public body by that same Heister Clymer and his Democratic associates. I have the speech here. I was told that the Senator was careful to suppress some parts of it, but in that speech he assailed Andrew Johnson in the strongest terms, declaring him utterly unworthy of the confidence of the Democratic party. And why was it that he made that assault on Andrew Johnson? Because we were disposed to honor him by giving him the use of the hall of the Senate of our State in which he could be heard in defense of the war. The Democratic party refused to vote for it; they would not even permit his voice to be heard in that hall in favor of the cause of his country.

A motion was first made in the House that Andrew Johnson, and Governor Wright, of Indiana, should have the use of the hall of the House in that dark hour of the country, and how was that motion met by the representatives of the great Democratic party, who are now, or claim to be, the special friends of the President? It was defeated by their votes, and then presented in the Senate. I have no disposition to join in any vituperation against the President. I am far from indorsing some of the utterances of my friend from Illinois [Mr. Ingersoll] in his speech to-day in regard to Andrew Johnson. I shall never engage in any personal abuse of any man who may be opposed to the policy of the party with which I act. But, sir, I say that this same Democratic party, led on by this same Heister Clymer in Pennsylvania, were opposed to allowing Andrew Johnson an opportunity to be heard in the hall of the Senate of Pennsylvania, and that the very same leaders have been here in this capital, and I have met them in the presence of the President of the United States, asking, as I suppose, for his interference in the State in favor of their party. These very men abused him two years ago as I never heard a public man abused in a public assembly, as I had occasion to know, for I was in the chair at the time, and was compelled several times to call them to order on account of their low abuse of a man that I supposed then to be, and still hope that I may be permitted to call, a patriot.

[Here Mr. Warner handed Mr. LAWRENCE the speech referred to.]

Mr. RANDALL, of Pennsylvania. I suggest that the gentleman have leave to print it, so that it may go to the country along with the speech of the gentleman from Illinois, [Mr. INGERSOLL,] to see which is the worst.

Mr. LAWRENCE, of Pennsylvania. I have not said anything against the President, and shall not.

Mr. RANDALL, of Pennsylvania. I am not alluding to your remarks.

Mr. LAWRENCE, of Pennsylvania. I say that the men who were the enemies and traducers of Andrew Johnson in my own State, the copperhead party, who have held their secret cabals day and night, who have

conspired against the Government, are now swarming around the President, getting down on their knees like sycophants, and asking for crumbs. I have seen them myself. And I have been told on good authority, and I believe it, that some of those who, a few weeks ago, nominated Mr. Clymer, came here to see if the influence of Andrew Johnson could not be had to carry that State for the Democracy in the coming contest.

Now, this is not saying anything against Andrew Johnson. I am telling who they were who abused him at that time, and who were his enemies. Those men to-day repudiate, as I suppose my colleague [Mr. Randall] does, the Baltimore platform; although my friend commends Andrew Johnson because he says he stands on that platform. And yet did my friend and colleague support and approve that Baltimore platform? I have no doubt he denounced it in every Democratic club-room in the city of Philadelphia, the very platform on which he says Andrew Johnson now stands.

Mr. RANDALL, of Pennsylvania. The Democratic party of Pennsylvania are not responsible for everything that Mr. Heister Clymer may say in his individual capacity. [Laughter.] Moreover, let me say that the Democratic party of Pennsylvania indorsed Andrew Johnson in their resolutions, because they believe his policy of restoration will give us once more a united country, and only on that ground.

Mr. LAWRENCE, of Pennsylvania. And the same party in my State sustained Vallandigham and indorsed him.

Mr. RANDALL, of Pennsylvania. When?

Mr. LAWRENCE, of Pennsylvania. In their State convention, in 1863. And I doubt whether we could have carried the State for Governor Curtin but for that full indorsement of Vallandigham.

Mr. RANDALL, of Pennsylvania. I demand my colleague's authority for that assertion.

Mr. LAWRENCE, of Pennsylvania. I give my pledge, if the gentleman will accept that.

Mr. RANDALL, of Pennsylvania. I will accept the gentleman's pledge for forty-eight hours.

Mr. LAWRENCE, of Pennsylvania. In the convention that nominated Woodward for Governor, against Curtin, a resolution was passed congratulating the Democratic party of Ohio on their nomination of Vallandigham. And if that is not so I will agree to give the gentleman—

Mr. SMITH. Twenty cents. [Laughter.]

Mr. LAWRENCE, of Pennsylvania. More than that; I will give a basket of champagne.

Mr. RANDALL, of Pennsylvania. The gentleman is mistaken. The convention denounced the arrest and manner of incarceration of Mr. Vallandigham.

Mr. LAWRENCE, of Pennsylvania. I am astonished that my colleague [Mr. RANDALL] has such a short memory. I have had occasion to read that resolution before tens of thousands of the people of Pennsylvania; I have had occasion to refer to it more than fifty times. I do not misrepresent the Democratic party, nor do I misrepresent Mr. Clymer, who is a personal friend and an honest man. He has voted consistently and at all times against the war policy of the Government, and against making appropriations to feed and clothe the soldiers who were fighting for the Government; he has always sustained the copperhead party and its friends in the State of Pennsylvania. He is and has been a consistent leader of that party, and stands to-day as the candidate of that party in our State for Governor; a party, the members of which did all they dared to do, and keep out of prison, to hand us over to the rebels in the South.

Mr. SMITH. Will the gentleman allow me to ask him a question?

Mr. LAWRENCE, of Pennsylvania. Certainly.

Mr. SMITH. I would like to ask the gentleman from Pennsylvania [Mr. LAWRENCE,] if it is not his wish as well as the wish of every loyal man in the country, I presume, that all men should be loyal and obey the laws and sustain the Constitution and the union of the States. Is not that his wish?

Mr. LAWRENCE, of Pennsylvania. That is my wish, certainly. And I should be very glad to see those punished who did not do so. And I would like to see some of them hung, and could name about twenty of them myself for that purpose.

Mr. SMITH. And I could double the number.

Mr. LAWRENCE, of Pennsylvania. And I do not know but I could name some in Kentucky.

Mr. SMITH. And I would double that, too. But I would ask the gentleman, if he finds men disposed and willing and anxious to obey the laws, and do obey them to all intents and purposes, would he have any cause of complaint against them?

Mr. LAWRENCE, of Pennsylvania. Does the gentleman expect me to have any faith in the Democratic party repenting of their sins? [Laughter.]

Mr. SMITH. Allow me, if you please.

Mr. LAWRENCE, of Pennsylvania. I thought the gentleman referred to them.

Mr. SMITH. Oh, no; I am not in the Clymer controversy at all. I do not know anything about it. I speak of those who are willing to obey the laws, and I do not come within the purview of the gentleman's rule of punishment. As to hanging the leading traitors, I am as much in favor of that as the gentleman from Pennsylvania can be.

Mr. LAWRENCE, of Pennsylvania. Well, Mr. Speaker, I did not mean to take up so much time. I was drawn into this discussion,

as the gentleman from Kentucky is aware, by the remarks of my colleague.

Mr. SMITH. I disclaim any intention to interfere in the controversy between the gentleman and his colleague. I was only asking a question with reference to the point of repentance and confession, whether the gentleman would forgive a man on that ground.

Mr. LAWRENCE, of Pennsylvania. Certainly I would, so far as I am personally concerned; but I would not, for that reason, exempt all the traitors from the just penalty of their crimes.

Now, Mr. Speaker, a dozen gentlemen around me are calling for the reading of the speech of Heister Clymer, to which I have referred, and which is just handed to me by the gentleman from Connecticut, [Mr. WARNER.] How he happened to have it I know not. In compliance with their wishes, I send to the Clerk's desk to be read an extract from the Legislative Record, the official report of the debates in the Pennsylvania Legislature.

The Clerk read as follows :

"Mr. CLYMER. Mr. Speaker, on this day, at this hour, in this place, a great issue is on trial, fraught with the interests, not only of the present but of the future; and if I, in the decision of this issue, have acted a part, however unimportant, I shall hereafter look back to this day, to this hour, and to this place, with feelings of no little gratification."

* * * * *

"What is the question presented? It is a proposition to invite Andrew Johnson, the so-called Governor of Tennessee, to address the people of Pennsylvania from the Senate chamber of this State. I have various reasons for opposing this proposition. In the first place, I here boldly proclaim that he is not at this hour and never has been, by the Constitution or under the laws, the Governor of the State of Tennessee, except when years ago he was elected to that office by the people. I say, sir, that his appointment by the President of the United States to that position was a usurpation of power on the part of the President, and that there is no warrant under the Constitution, no authority in the laws for his appointment; and that every act which he has assumed to perform by virtue of his unconstitutional and illegal appointment has been in derogation of the rights of a sovereign State, and flat violation of the Constitution of the United States.

"I say, sir, furthermore, that no such position as military governor of a State is known to the Constitution of the United States; that there is nothing in that instrument which authorizes the President of the United States to appoint a military governor of any State; and that to make such an appointment was to create the State of Tennessee a military province; and that his appointment was made to carry out and subserve the purposes of the present Administration, which is to reduce all the States of this Union to the condition of mere dependencies of a consolidated oligarchy or despotism. That is my position, so far as concerns this pretended Governor of Tennessee. Andrew Johnson has not been for years, and is not now, the Governor of that State; and I will never recognize him as such by voting for this resolution.

"But, sir, without regard to any question of his official position, take Andrew Johnson is an individual, assuming that he is rightfully clothed with the robes of office and may constitutionally exercise the duties of that high position; even then, I say to you, Mr. Speaker, that I never by my vote will allow a man to come into these halls and from this place speak to the people of this great State in support of what I know to be illegal, unconstitutional, and tyrannical acts of the Federal Government. I know, sir, that Andrew Johnson has gone as far as the farthest, and is ready to go still further, to destroy, to uproot, to upturn every principle upon which this great and good Government of ours was founded. I know that he has bent with suppliant knee before the throne of power; I know that for pelf [sic] or some other consideration, he has succumbed to every measure presented to him for approval or disapproval; and I know that in speeches delivered in the capitals of other States he has enunciated doctrines which, if adopted by the people of the great North, would be subversive of individual freedom and personal right.

Sir, by no vote of mine can any person holding such views address the people of Pennsylvania in this chamber. Never, sir, never, so long as I have a right to forbid him."

Mr. LAWRENCE, of Pennsylvania. As the language to which I have referred does not appear in that speech, it is proper that I should say that Mr. Clymer and others suppressed a portion of the most objectionable part of their speeches. But from the whole tenor of that speech, the House will observe that it was a repudiation of Andrew Johnson, not only personally and politically, but officially.

Mr. RANDALL, of Pennsylvania. Will my colleague yield to me a moment?

Mr. LAWRENCE, of Pennsylvania. For what purpose?

Mr. RANDALL, of Pennsylvania. That I may have read a document which I wish to go to the public along with the speech of the gentleman from Illinois, [Mr. INGERSOLL.]

Mr. LAWRENCE, of Pennsylvania. I cannot yield for that purpose.

Mr. RANDALL, of Pennsylvania. It will take only a minute.

Mr. LAWRENCE, of Pennsylvania. The gentleman knows very well that I have not much time.

Mr. RANDALL, of Pennsylvania. The document which I desire to have read is the platform upon which Heister Clymer was nominated as a candidate for Governor.

Mr. LAWRENCE, of Pennsylvania. I have seen that platform over and over again. It is an utter abandonment of all the old positions of the Democratic party.

Mr. RANDALL, of Pennsylvania. It is a good Union platform,

Mr. LAWRENCE, of Pennsylvania. But, sir, of what use is a platform which every one knows to consist simply of hypocritical professions? Sir, the platform which that party has adopted in Pennsylvania for campaign purposes is a card representing Clymer supporting a white man, while General Geary, that heroic man, who traveled with Sherman through the South, and returned victoriously, is represented as holding up, or perhaps embracing, a negro.

Sir, the only capital of the Democratic party to-day in Pennsylvania is the negro question: They attempt to appeal to the lowest passions and prejudices of the ignorant and debased with regard to the negro. Because some of us representing here the State of Pennsylvania voted for negro suffrage, as an experiment, and to enable them to compete with returned rebels in this District, our names are paraded as friends of the negro in preference to the white man. In this, with the tricks of demagogues, that party appeal to passion and prejudice, and not to judgment and reason.

Now, I say that is the platform upon which these men stand. It is published in every Democratic paper in the State. I eulogized President Johnson when these men were denouncing him. I stood by him at that time, in Harrisburg, when he made one of the most able arguments that I ever heard in defense of the Constitution and the right of the Government to put down this rebellion. I followed him then; I followed him in Tennessee, when he stood like an oak stricken in the forest, when he was driven from home, and his family were scattered. I stood by him then, and I stood by him as the candidate of the Republican party in the last campaign. I helped to elect him. I would be glad, sir, to say that I indorsed every act of his Administration. I do not, and I cannot. I came here as anxious as my friend from Illinois that we should be united, that, the President and Congress should stand together in this great issue. I knew the assaults we had to meet from the Democratic party. I knew they were thirsting for the loaves and fishes. I knew they would use every effort to secure possession of the Government. I was anxious that we should stand upon the platform of the party which would save us from this humiliation and disgrace. I did all a man could do to stand by the President, and, as some of my friends know, I subjected myself to suspicion and reproach from some of my radical friends, because I did not indorse all their policy. I regretted to hear the President abused early in the session. I was anxious we should be kept together; but after his speech of the 22d of February, and after his veto of the civil rights bill, I found I could not go for his whole policy without degrading myself and losing my own self-respect.

And I say here, in the presence of the nation, that my district that voted for him was in favor of sustaining his Administration until by some of his own acts, and by means of the copper-head party all over the land, he succeeded in destroying that confidence which I desired to cultivate; and to-day I have the gratification to know, although I represent a doubtful district, that the President, by the removal of pure, honest, and patriotic men, and by pardoning men covered all over with crime, who have been guilty of treason to the country, and by suffering himself to be led astray by our opponents, has made it necessary for the Union men to stand together in support of the general policy we sustain here, and they are as earnest and as powerful as when they sustained Andrew Johnson for the Vice Presidency of the United States. They stand in opposition to the general policy of the President, and in favor of the general policy pursued by the party in Congress, and I stand there with them. I am

not going to abandon my principles to follow the lead of any man. I was willing to yield something for peace and harmony. When war is made upon us, when it comes upon the wings of the wind every morning and every evening, when we are attacked upon all sides, when attacks are made upon our people because they are not willing to bear the yoke, I cannot support the policy.

Mr. Speaker, I will not abuse the President personally. I never do that thing. I predict, with the honorable gentleman from Illinois, that we need not fear the contest. We live in an age of advancement, when bibles and churches and school-houses are scattered all over the land, when men are expected to respect a man because he is a man, when men are expected to do justice to all men, white or black; and I say the day is not far distant when this miserable copperhead party, that has no love of principle, that does not stand by its professed principles during more than one campaign, that has changed them in my own State twenty times within my own knowledge, when this Democratic party that derided Johnson, that slandered Lincoln—yes, sir, for they did deride, vilify, and slander him all over the land, calling him a low buffoon, while today they come up and hypocritically sing praises to his memory—I say that the day is not far distant when this Democratic party will sink into oblivion covered with the curses of the people it has deceived.

This same party rallies around President Johnson by night and by day. Go to the White House any time you please and you will be sure to see some of them, and always the shadow of some of the Blairs, [Laughter.] I have scarcely ever gone there without meeting some one of the family. I have seen the old man, who is almost ready to fall into the grave, there. It was the same during Lincoln's administration; he was always there trying to lead the President away from the people, in order to give office to the family.

I feel like the man in my own State at the time that President Jackson removed the deposits. He said, "I didn't wish General Jackson any harm; but I shouldn't care if the Almighty took a fancy for him." [Laughter.]

No family in this land so few in number has done so much to alienate the President from those who were his friends as this family of Blairs.

I have been drawn off into this personality. How could I help it? The Union organization by which I have stood since the first tocsin of arms was sounded at the attack on Sumter, I have followed it, never stopping to inquire whether a man who adhered to it was a Democrat or a Republican, and it was this organization and its policy that saved the country. I have met these men who call themselves Democrats everywhere. I know where they stand, and how they long for the flesh-pots of Egypt. But I have always found myself right when I have sustained the Union organization in my own State. Months ago I trembled for the President elected by Union votes, when I saw those men about the White house trying to steal him away, flattering him, eulogizing him, and dictating a policy for him.

When I saw, long since in the State Department, a pile of pardons as high as twenty family Bibles, [laughter,] and a man carrying a lot of them out. I saw it was a wholesale business, and was informed by a gentleman there he had carried out thousands of such.

Well may we tremble for the President, when

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we reflect how much depends on his fealty to his true friends.

But as my friend from Illinois [Mr. INGERSOLL] has well said, the Union party will survive and save the country. I glory, sir, to-day, in the record of that party. There never has been a party in any country that has done so much for liberty. It has saved this Government from destruction. While the soldiers met the rebels in the field of battle and defeated them, the loyal men of the North met their allies in the political field, at the polls, and defeated them. I repeat, this Union party has saved the country in its hour of trial and it will triumph in the end, not so much on account of its numbers as because it is right. As my friend from Chicago [Mr. WENTWORTH] remarked the other day, "God will sustain us if we sustain the right."

I repeat, then, the Union party is bound to triumph. I may not indorse all that is done here by it. I am not quite satisfied with the report of the committee on reconstruction and shall vote to amend this proposition. But the Union party will live in spite of adversity. Already the political ax is falling upon the necks of our friends. Heads are falling in my own State.

A MEMBER. Who are they?

Mr. LAWRENCE, of Pennsylvania. As good men as ever lived are being displaced for bad men. The President has turned out the marshal of western Pennsylvania, as pure and upright a man and as capable as ever held office anywhere, and appointed a man in his place who was dismissed from service on a charge implicating his integrity. Thank God, he is not confirmed, and will not be. [Laughter.], I have met him very often. I do not

know how much money he has made out of the position that he lost. The report varies.

Mr. SMPPH. Who recommended him?

Mr. LAWRENCE, of Pennsylvania. It is not for me to say. Certainly the gentleman from Kentucky [Mr. SMITH] did not.

Mr. SMITH. I suppose somebody from Pennsylvania did it, and I would like to know.

Mr. LAWRENCE, of Pennsylvania. When I spoke to the President about the late marshal, and told him what I knew of him—told him that there was no more competent or worthy officer to be found—the President intimated that he should not be removed; but before two days elapsed he was removed and another name sent into the Senate; the one to whom I have referred as having been dismissed from the service of the Government charged with various crimes.

Mr. SMITH. I would like to ask the gentleman from Pennsylvania [Mr. LAWRENCE] if this person who was appointed marshal by the President did not carry with him some similar recommendations, in a political point of view, to those upon which the President released Clement C. Clay upon parole.

Mr. LAWRENCE, of Pennsylvania. I am glad the gentleman has asked me that question. Now, I venture to say—and I have not seen the record, and do not know whether there is any or not—that there is not an honest Union man in western Pennsylvania who signed any remonstrance against the late marshal. No charges were or could be preferred against so pure and upright a man, respected and loved by all who knew him. But there is a little cabal or clique of three or four men in Pittsburg, in the district of my colleague, [Mr. MOOREAD,] who cannot control twenty votes in any ward or borough in the State, brought this influence, with the aid of leading Democrats, to bear on the President; and I now make the prediction that notwithstanding that attempt to break down my colleague in his own district by removing some of his purest and best friends, he will come back here to the next Congress with as large a majority as he ever had before. Those few men, "sore-heads" we call them there, are men who always want offices from any party that has them to give. I hope the President will deem it proper and right to withdraw the name he proposed for marshal from the Senate. I am certain the President has been deceived in regard to that man, for he would not inflict such injustice on his loyal friends in western Pennsylvania—men who sustained him so cordially and so effectively.

I have always been treated kindly by the President personally, and always expect to be. When he makes a mistake he allows me to refer to it. And if I make a mistake I am willing that he should refer to it, if he does not do it in a speech on the 22d day of some month. [Laughter.]

Now, Mr. Speaker, I had not the slightest intention when I came here to-day of saying one word of what I have said. I have a speech here on the tariff, and on the subject of protection to wool. You told me that I could not get the floor next Saturday, but that I might get in a speech to-day, if I would hurry up and get it ready. So I went home yesterday, and being a hard-working man I sat up late last night and got up early this morning, and about concluded my preparations for a speech to-day on the tariff.

Now, I represent a district that is more interested in wool-growing than any other district in the country, not even excepting that represented by my friend from Iowa, [Mr. GRINNELL,] who has shown so much interest in wool this session. And I believe my own county has more and better sheep than any other county in the country. [Laughter.]

Mr. GRINNELL. I have been charged by the people in my district with having had so much to do with another kind of wool that was not so popular, that I thought I would go for another kind that the people are more willing to have.

Mr. LAWRENCE, of Pennsylvania. Representing a district which has such a deep interest in the subject, I thought I would be justified in saying a few words in favor of protecting wool.

When this political subject came up I was led into speaking upon it, and I have said more than I had intended to do. I have this speech here on wool and tariff, but I feel some hesitation in boring the House with it, for it is a dry speech, full of statistics and figures.

Mr. SMITH. I move that the gentleman have leave to print his wool speech instead of the one he has made. [Laughter.]

Mr. RANDALL, of Pennsylvania. I object to that arrangement.

Mr. LAWRENCE, of Pennsylvania. I do not know that the speech I have made now will appear very well in print. But I am sure the speech of my colleague to-day [Mr. RANDALL] will not compare very well with his former record.

Mr. WILSON, of Iowa. If the gentleman from Pennsylvania [Mr. LAWRENCE] should not publish his speech of to-day we should lose Clymer's speech; and I should not want to lose that.

The SPEAKER. The Chair would say to the gentleman from Pennsylvania that the reporters of the Globe have already taken down his speech of to-day.

Mr. LAWRENCE, of Pennsylvania. I have been led off on this political question. But I want it distinctly understood that I intended only to get in this wool speech to-day. [Laughter.]

Mr. GRINNELL. I move that the gentleman have leave to print his wool speech.

Mr. SMITH. Certainly; that is right.

No objection was made, and leave was accordingly granted. [The speech will be published in the Appendix.]

Mr. LAWRENCE, of Pennsylvania. I have kept very quiet this session, as members very well know. I thought it most prudent in a new member not to mix up in these political discussions. But I felt it to be a duty that I owed to the people I represent to speak on this question of protection for wool. I have presented petitions with more than ten thousand names asking Congress to give them increased protection on wool. I have been, with others, before the Committee of Ways and Means on this subject, and I will say to the country that we believe the committee have agreed to report just what the wool-growers desire on that subject.

Mr. BANKS. I hope the gentleman from Pennsylvania will go on with this speech and let us have the other in print.

Mr. LAWRENCE, of Pennsylvania. I have little more to say, as my time is nearly out. I wish now to say, in addition to what I have said, that I am willing to trust the future of this great nation to the Union party which has done so much for the country. When a party is held together and actuated by an honest desire to perpetuate the greatest good for the greatest number, you cannot by these side issues and by executive patronage corrupt it and lead it away from the path of duty.

Sir, the people do not forget the amount of blood and treasure that they have spent during the last four or five years. They do not expect this Congress to proceed in the work of reconstruction upon a policy which would lose to the loyal people of the country all that they have gained in the late contest. And this Congress will be sustained as far as they are right.

The members of the Union party have been slandered and vilified and denounced all over the country; but, sir, I venture to say that this Congress comprises a body of men as honest and as faithful to the interests of the country as any men who ever sat in this Hall. Sir, we are assailed, not because we are partisans, but because we stand together as men loving justice, standing up for the right.

In the coming contest in Pennsylvania the Union party will be sustained. My colleague over the way [Mr. RANDALL] knows that the contest promises to be as bitter as any that we have ever had in that State. He knows how loyal the people of that Commonwealth are. He knows that Pennsylvania gave to the aid of the Government as many soldiers, and more, perhaps, in proportion to her population than any other State in the Union. He knows that the great heart of that giant State—it has sometimes been called the blind giant—has always beaten in unison with the highest and best interests of the country. And I tell him that on the night of the second Tuesday of October next we will send up from western Pennsylvania a voice which will convince him that the people have not forgotten the record of Heister Clymer. They have not forgotten the fact, which the legislative journals prove, that he uniformly voted against securing to the soldiers in the field the elective franchise; and in a public speech he boasted of having done so. In my presence he voted over and over again against every proposition calculated to assist and sustain the State and the nation in the late struggle. He has been a most consistent friend of Vallandigham and William B. Reed, and that class of men all over the country; and he is a fit representative to-day of the Democratic party. He is a friend of Woodward, who as judge of the supreme court made a decision against the constitutionality of the conscription law, and who, because of that decision and one against enfranchising the soldiers of the State, was nominated by the Democratic party for Governor.

Mr. Speaker, I say that when the people of Pennsylvania come to look at the record of the Democratic candidate for Governor in my State, not only on these questions relating to the war, but on other questions, they will repudiate him. The Union party in that State, as members of this House are aware, have nominated a candidate without reference to his political opinions; a man who did once act with the Democratic party. We expect to elect him, and we will elect him. I can assure you the people are honest and well-informed and will stand by the country, and the truest, best friends of the country, and all will be well. Now, I will not detain the House longer. Not a word on this question which I have said did I intend to say when I came into this House. I now yield the floor.

Mr. ROGERS. Mr. Speaker, I did not intend when I came here to-day to participate in this debate, nor did I expect when I came here to be entertained with debate of the character

of that indulged in by the gentleman from Illinois, [Mr. INGERSOLL.] Indeed, I should not now say anything did I not feel it was my duty, when a man holding a high official position in the United States, the highest within the gift of the people, is assailed in his personal, political, and national character, as a Representative of the people to sustain him in the principles which he has enunciated, and which I believe to be the true Union principles of the country. Nor do I, in the remarks I intend to make, expect to indulge in any loose charges against those who represent the Republican or so-called Union party. I am not ready to believe that the rank and file of that party are disloyal to their country, nor am I willing yet to believe that those eighteen hundred thousand men who supported George B. McClellan in 1864 were disloyal to the country and wished to accomplish its ruin and to establish a despotism in place of the free Government which descended to us from our forefathers.

But while I support the doctrine of the President of the United States with the rank and file of the Democratic party, it is from the fact that the doctrine he has enunciated now, and the doctrine he has always enunciated, is the doctrine of constitutional liberty, which is the very life and soul of our form of Government, without which the light of liberty would go out and we would sink into despotism. I take the ground here, and without fear of successful contradiction, that Andrew Johnson has not violated any principle he ever enunciated, that he acts to-day under the solemn obligations of the oath which he has taken to support the Constitution in all its integrity, that he has betrayed no principle or party, and that his only ambition and his only hope are to sustain this great and glorious Union in the pristine vigor which it had before the war commenced.

I am ashamed, sir, at the situation which affairs have taken in this country. I weep in silent sorrow that a Representative of the United States Congress should get the attention of this House and country in vilifying and abusing as true and noble a patriot as ever stood up in any country in defense of its imperiled existence; a man, sir, who left the Senate of the United States in response to the call of his country; a man who, although southern-born, still imbued with the teachings of the fathers of the Republic, stood with those lovers of his country whose blood has been so freely shed upon southern soil; a man who has been identified with the Unionists of the South from the commencement, and whose defense of our flag, emblematic of the principles of constitutional freedom, made him the envy and admiration of all civilized nations. Yes, sir, he left the Senate of the United States for the purpose of vindicating the founders of his country, and to stand by the principles embodied and set forth in the Declaration of Independence and the Constitution of the United States. Sir, I would not degrade this House so much as to descend to the position which has been taken here to-day by the honorable gentleman from Illinois in vilifying, abusing, traducing, and slandering as noble a patriot as ever lived upon the face of this earth.

Mr. WILSON, of Iowa. The gentleman refers to the present President having left the Senate of the United States. When he left the Senate he did it to take possession of the office tendered to him by President Lincoln; that of military governor of the State of Tennessee. I wish to ask the gentleman from New Jersey whether he indorsed the act of President Lincoln in appointing a military Governor for Tennessee? If he did not, did he indorse the acceptance of that office on the part of Mr. Johnson?

Mr. ROGERS. I have no hesitation in saying that the appointment of military governors in time of war, when the civil tribunals could not perform their functions in the Union, was constitutional under the right to raise and support armies, repel invasions and suppress insurrections, and that when Abraham Lincoln appointed Andrew Johnson as military governor he did it as Commander-in-Chief under military law. And I am here to sustain the appointments of military governors under those circumstances, whether appointed by Abraham Lincoln or Andrew Johnson, as an element of military power when the nation is sought to be torn asunder by rebels in arms, as a necessary element of military power to sustain the flag and to defend the country.

Mr. WILSON, of Iowa. The gentleman from New Jersey evidently misapprehended my question. I asked him whether he, at the time Mr. Lincoln performed that act, indorsed it.

Mr. ROGERS. I say this: that I never had anything to say about it, that I know of, either publicly or privately, in any way whatever. But never doubted the right of a military commander in a military district where hostilities existed and the flag of the country was being assailed by armed invasion, to use the military power within those military lines. And I say I have always indorsed, and do now indorse, the act of Abraham Lincoln in appointing military governors within the lines of the military operations.

Mr. WILSON, of Iowa. The gentleman occupies a somewhat conspicuous position in the Democratic party, and inasmuch as he says that at that time he has no recollection of having uttered any word of indorsement or disapproval as an individual, I would ask him whether the party with which he then acted and now acts indorsed the acceptance of office by Andrew Johnson.

Mr. ROGERS. I say, sir, as a party, you can nowhere find in any State, county, or township an instance where

the Democratic party ever denounced Abraham Lincoln for the exercise of military power within a State while the people of that State were arrayed in insurrection against the Government, and where civil law could not prevail.

Mr. WILSON, of Iowa. I believe that the speech which was read at the desk a few moments ago, made by Mr. Clymer, the Democratic candidate for Governor of Pennsylvania, does distinctly denounce the action of Mr. Lincoln in making that appointment, and denounces the acceptance of it by Mr. Johnson. Now, I would like to ask the gentleman whether that utterance of Mr. Clymer at that time was not in harmony with the views and position of the Democratic party.

Mr. ROGERS. As to the utterance made by Heister Clymer I have no knowledge, and I am free to say that so far as my knowledge extended the party indorsed no such sentiments as are attributed to Mr. Clymer, but there is no proof that he ever uttered them except the assertion of an abolition sheet. And let me say further, that the Democratic party, with its eighteen hundred thousand voters in the North, and representing millions of women and children, is not to be bound down by the idle or loose declarations of any man, any more than the honorable gentleman would wish to have the whole Republican party bound down by the declaration of Wendell Phillips when he said that he had been a disunionist for thirty years, or of Horace Greeley when he held out an invitation to the southern people to secede.

Mr. WILSON, of Iowa. I presume when that question was pending in the Senate of Pennsylvania that the Democratic party was represented in the persons of the Democratic Senators. Now, I ask whether that party thus represented did not sustain Heister Clymer by voting to refuse the use of the hall for the purpose of having that address made by Mr. Johnson.

Mr. ROGERS. No, sir; that was no indorsement of what Mr. Clymer said at all, any more than voting upon a proposition brought forward by a man is an indorsement of his speech made on that proposition. The Senators had a right to refuse the use of that Hall to anybody for a public meeting; and simply because those Senators who represented the Democratic party saw fit to cast their votes in accordance with the proposition of Mr. Clymer, it by no means follows as a fair conclusion that they indorsed all the language he is charged by that sheet to have used on that occasion.

Mr. LAWRENCE, of Pennsylvania. Allow me to ask if Mr. Clymer has not been reelected to the Senate by the same people, and also renominated for Governor, since he made that utterance.

Mr. ROGERS. That may all be; but because he was reelected it is no evidence that the people who voted for him indorsed all he has said. I have no doubt that we have said many things on this floor and elsewhere that all our constituents do not indorse; and I will guaranty there is not a member here whose whole constituents will indorse all he has said. Will any one undertake to say, for instance, that all the Republicans of the district that send to this body the gentleman who says he regards the States lately in rebellion as conquered provinces will indorse that utterance of the distinguished gentleman from Pennsylvania, [Mr. STEVENS?]

It is most unfair to undertake to make a great party responsible for what a few individuals may say. Because some men in the Democratic party may be unwise, that ought not to consign the Democratic party and its great doctrines to the tomb, even if the party should happen to support some of those men for official position.

I know there are members of the other side of the House, and I can pick them out, who often support measures advocated by the distinguished gentleman from Pennsylvania, [Mr. STEVENS,] and yet disagree with him in the reasons by which he has reached his conclusions upon the subjects. I know from having had private conversations with them, and from hearing their speeches upon this floor, that this is the case. There are some of them who hold that the States are out of the Union, are dead for all political purposes; others hold that they are States in the Union, but without the right of representation. But there are some who hold with the Democratic party, that those States are entitled to immediate representation upon their representatives taking the oath prescribed by the Constitution and the laws, yet they all vote together when the test comes.

Now, to charge a whole party with the responsibility of the acts of Mr. Vallandigham, or anybody else, is uncharitable and unjust to the eighteen hundred thousand men in the North, many of whom had periled their lives in defense of their country, who voted for George B. McClellan for President of the United States. I say without fear of contradiction that the records of the Democratic party, from a period coeval with the formation of our Government, show that their doctrines and principles brought us to a state of prosperity unequalled in the annals of history. And only when the last generations of mankind have been gathered to the silent tomb will the principles they have always maintained and advocated cease to exist. And I am not to be driven from my honest convictions of duty by any denunciations of the party to which I belong, or by calling them traitors and disunionists.

Sir, Andrew Johnson is pursuing now just exactly the course he has always advocated. You cannot find in the Baltimore platform, upon which Abraham Lincoln was nominated and elected as President and Andrew Johnson

as Vice President of the United States, one single word which contradicts what he now seeks to carry out. Will you call Andrew Johnson a traitor and disunionist because he wants the union of the whole country? What was the object of the bloody war from which we have just emerged? Why were a million men killed, maimed, and wounded upon the field of battle, and \$3,000,000,000 of Federal and \$1,500,000,000 of State debt imposed upon the country? Why have weeping and sorrow and anguish been carried to almost every home in this broad land? It was because we desired to perpetuate the Union which our forefathers established and handed down to us for the protection and defense of the white men and the white women of this land.

Sir, Andrew Johnson wants the Union as it was. He wants the Union that was made by the fathers and sages of the times that tried men's souls. He wants the Union which was intended to be the shield of the rights of the States; and the protector and guardian of the rights of the Federal Government. He wants the proper equilibrium preserved between the three coordinate branches of the Federal Government. And because he will not violate every pledge of faith that the Republican party made to the people in 1864, he is to be branded here as a tyrant and usurper, and as a violator of the principles which lay at the foundation of our Government.

I do not want to insult any one. I do not rise for any such purpose. But when any of you rise here and charge, as you have to-day, the Democratic party and Andrew Johnson with being traitors to their country and sympathizers with secession, I denounce it as wickedly false. This Congress, by its acts, through this central directory of fifteen that holds its secret sessions in this Capitol, is sapping the very life-blood and weakening the very foundations of this Government.

Mr. WILSON, of Iowa. I would ask the gentleman from New Jersey if he is not himself a member of that central directory of which he speaks.

Mr. ROGERS. I am, and I have great respect for the men who are on it. I am not here to say that those men, or any men upon the other side of the House, are actuated by any desire to commit intentional wrong. I would not degrade myself and the country by charging that gentlemen on the other side of the House, who have always treated me with respect, are any of them desirous to injure the country. But their prejudices and their passions, as in the case of John Brown when he committed murder and treason in Virginia, are leading the country on to destruction, and without the interposition of Andrew Johnson the lamp of liberty would soon be extinguished forever.

Now, sir, I had no participation in the election of Andrew Johnson—

Mr. WILSON, of Iowa. I should like to ask the gentleman another question. It may be that this "directory" has been guilty of something which has not been disclosed. If the gentleman is at liberty to name it I should like him to do so. I believe that the committee has removed the injunction of secrecy.

Mr. ROGERS. The gentleman knows perfectly well what has been done by that committee. He knows that from that committee have emanated projects of disunion. He knows that from that committee has emanated the doctrine embodied in the proposed constitutional amendment and the two bills which have been presented—the doctrine that the war dissolved the Union, that the southern States are out of the Union, and that it will require an enabling act of Congress and an amendment of the Constitution to bring those States back into the Union.

I am no disunionist. I will cooperate with no party that seeks to destroy this country. When the leaders of the majority party on the floor charge me and my fellow-members of this Democratic party with being traitors, I hurl back the charge into their teeth, and tell them that they are the only paw now preventing the consummation of the great work of restoring the Union upon the principles of self-government consecrated by the blood of our revolutionary forefathers.

Mr. WILSON, of Iowa. The committee of which the gentleman is a member have presented their report proposing an amendment to the Constitution of the United States. One provision of that proposed amendment is, as I understand, that the southern States shall no longer be entitled to that unfair and unjust share of representation which they have heretofore enjoyed, and that, instead of having as the result of four years of war, an increase of political power in consequence of the emancipation of the slaves, they shall conform to a basis of representation which will be just to both the North and the South, applying to all the States alike, and under which those who are enfranchised shall be represented. Now, I desire to know whether the gentleman is opposed to that principle embodied in the report of that committee, or "directory," as he terms it.

Mr. ROGERS. Yes, sir, I am opposed to it for the same reasons that our fathers were opposed to taxation by the British Parliament when they were denied representation in that body. I am opposed to it on the principles of the Declaration of Independence and the fundamental doctrines of the Constitution.

Sir, let me say further, in answer to that suggestion, that at the time of the formation of the Constitution slaves were held in all the States except one, and there was in many of the States a large colored population. From time to time slavery was abolished in the different northern States; yet, although the abolition was not accompanied by the enfranchisement of those who were emancipated, no one proposed that any of these States should be deprived of representation for the colored population to whom they denied the right of suffrage.

Mr. WILSON, of Iowa. We are not proposing, as I understand, even if we adopt the amendment reported by the committee, to take away from any State any just share of representation. The proposition, as I understand it, is this, and no more: that a man in South Carolina shall have no more political power in this nation than a man in New Jersey or in Iowa; that a white man in the State of South Carolina, which inaugurated this rebellion, shall not have as much power as that exercised by three men in the State of Iowa. I ask the gentleman whether he is opposed to that kind of representation.

Mr. ROGERS. I maintain, sir, that there is no more necessity for an amendment of the Constitution, because a portion of the southern population, lately slaves, have become free, than there was for a constitutional amendment when the various northern States abolished slavery within their limits. I say that the Constitution as it stands grants to the southern people no right of representation except that used on population; and in this respect all the States are placed on an equality; the South enjoys no peculiar advantage. Sir, if a million foreigners land at the port of New York and become a part of the population of the State of New York, that State, under the Constitution, is entitled to representation for those foreigners, although they may never become citizens and never vote.

And I say, sir, that the representation which has been allowed to the people of the southern States for the people of color will not exceed the basis for representation of foreigners who are not entitled to vote in the northern, middle, and western States.

Mr. WILSON, of Iowa. Would not the same result follow if one hundred thousand foreigners or a million foreigners should go into South Carolina instead of into New York?

Mr. ROGERS. Exactly. Let us leave the landmarks of this Government as they were when the Government was made. I believe this Government is the fruit of the most experienced wisdom of any people who ever lived, and that Washington and Jefferson and the men who framed the Constitution of the United States, coming out of the Revolution imbued with the principles of liberty and having the mantle of victory and patriotism thrown over them, were the best judges of what the true interests of this country are. Sir, in this time of excitement and of peril, when the Union, by the action of the members of this Congress, is dissolved, because eleven States are prevented from sending their Representatives here, to which right, under the Constitution, they are entitled, it is no time to amend the Constitution.

Mr. WILSON, of Iowa. The gentleman speaks of the excellence and perfection of the Constitution as our fathers made it. I ask him whether he does not think the Constitution now, embodying as it does the prohibition of slavery throughout the country, is not a little better than it was before.

Mr. ROGERS. That is an issue which I am not here now to discuss. It is an issue dead and gone. It is part of the history of the past. It has become part of the Constitution of the United States and freedom has been proclaimed to four million people. My vote, power, and influence shall be given to sustain that provision so long as I may live, whether North or South shall desire to strike it out.

Mr. WILSON, of Iowa. I ask whether if those States who have been in rebellion were represented in these Halls at that time that provision would not have been defeated.

Mr. ROGERS. At that time these men were engaged in rebellion and were convicts before the altar of patriotism. The execution of the law has been forgiven by the clemency and Christian character of the President. While they were firing upon the flag of the country and trying to destroy this Government they were not entitled to any consideration at all.

Mr. WILSON, of Iowa. I ask the gentleman whether he approves that portion of the President's conduct and policy which compelled the people of these unrepresented States to ratify that amendment and make it a part of the Constitution of the United States.

Mr. ROGERS. I did not then approve of it, but I believe now it was for the best interests of the country; that as an issue of war it should be given up in the reconstruction, after the war had wiped out slavery, to prevent future agitation upon it. I am satisfied that the best interests, the grandeur, glory, and perpetuity of this Government demanded that the States should perpetuate the result of the war in striking the shackles of slavery from every human being within the length and breadth of this land. I never was in favor of slavery. No man, sir, ever heard me advocate slavery in the abstract, but I was in favor of standing by the elementary principles

embodied in the Constitution of the United States. I believed, and do yet believe, that abolishing slavery by war was in violation of the plighted faith of Congress as given in the Crittenden resolutions adopted after the war had begun, and of the letter, spirit, and intent of the Constitution. That proposition set forth the principles upon which this war was fought, and it emphatically declared that when the rebels laid down their arms the Union should be restored.

Mr. WILSON, of Iowa. The gentleman has to some extent eulogized the abolition amendment, and also the conduct of the President of the United States in relation to it, the Congress that passed it, and the Legislatures in the insurgent States which ratified it.

Mr. ROGERS. I have not eulogized them at all.

Mr. WILSON, of Iowa. I ask the gentleman whether, in his opinion, that great good could have been provided, whether that amendment of the Constitution could have been had, whether that security of liberty could have been procured for the people of this country if the insurgent States had been represented in these Halls; and if not, whether it would have been wise to postpone until their recognition was procured action on that amendment to the Constitution.

Mr. ROGERS. No, sir; I am not finding any fault, and if the gentleman had listened to me he would have seen that I found none with the course of action at that time in taking advantage of the absence of southern Representatives. But I held then as I do now, with Alexander Stephens, that there is no power in the Federal Government to usurp the functions of a State that have never been delegated to the Federal Government, even by a constitutional amendment made without the authority of the other States. I say that the abolition of slavery was an event of the war, and the result of one of the principles of war resorted to by the conquering power, that being the arbitrament to which the southern people submitted. And slavery having been abolished under those circum-

stances, I wish to keep it dead and buried forever, so far as I am concerned.

Mr. WILSON, of Iowa. The gentleman says he is opposed to the exercise of powers not delegated by the Constitution. I desire him to point out the particular clause which authorized the President to appoint provisional governors for those States and to require of those States the ratification of the constitutional amendment abolishing slavery.

Mr. ROGERS. The power was this: the Constitution of the United States says that the United States shall guaranty to every State a republican form of government, and when the people of any State are in insurrection, or when a State is overrun by the armies of other States, it is the duty of the President to call out the militia, suppress the insurrection, and repel that invasion. And it was by virtue of the power conferred by the force of military law, as embodied in the Constitution of the United States, that Abraham Lincoln had a right, not as President of the United States, but as Commander-in-Chief of the Army, to dictate such a state of affairs as would come within the requirement of the Constitution in guarantying to those States a republican form of government. And as slavery was an instrument of war, one of the principles upon which it was waged, the main principle, in fact, for the last two years, the arbitrament has settled that as much as any other question. When the people went to war these extraneous matters gave way to the force of the arbitrament, and were settled for all time to come.

Mr. WILSON, of Iowa. Then I desire to ask, inasmuch as Texas was omitted from the proclamation of the President, whether, in the gentleman's opinion, if Congress should pass the amendment now pending, it would be competent for Andrew Johnson, as President of the States, to require of Texas the ratification of that amendment before he would recognize her as restored to such an extent as to be entitled to representation in Congress.

Mr. ROGERS. No, sir. I claim, notwithstanding what Andrew Johnson may have required, that when the rebels laid down their arms and submitted to the Constitution of the United States the war was ended. Notwithstanding anything that may have been put on paper by the President or anybody else, the very moment the southern States succumbed that very moment their State governments could by the people be put in full operation, because those State governments had been merely suspended by virtue of the illegality of action of the southern people, which never could destroy the existence of those States as States of the Union under the original act of admission.

Mr. WILSON, of Iowa. If I understand the gentleman's position, it is, that while the war was going on, before the rebel armies surrendered, the President might do this thing. But I wish to ask him whether the rebels had not surrendered before the President issued his first proclamation for the establishment of a provisional government in North Carolina, and whether all those provisional governments were not established after the surrender, and all those requirements on the part of the President were not subsequent to that time, by which they were to do certain

things, and among others ratify the constitutional amendment abolishing slavery.

Mr. ROGERS. Nobody can doubt that a State government may be operated within the military lines by military governors, and it was only as a condition to the laying down of their arms that the Commander-in-Chief exercised the right under the Constitution to establish a republican form of government and lent the aid of the military power to the people of the insurgent States for them to ratify the act in such manner as they thought right, and upon such principles of the union of the several States as existed before they attempted to carry them out of the Union.

Mr. WILSON, of Iowa. I understood the gentleman from New Jersey to say that as soon as the rebel armies surrendered, the old State governments as they existed prior to the rebellion at once revived; of course that must have included the revival of the constitutions of those States. Now, I wish the gentleman to state whether those States had republican forms of government before the rebellion. If so, and those governments were revived by the surrender of the rebel armies, where did the President get the power to require them to change those republican forms of government?

Mr. ROGERS. He was authorized to exercise that power upon the ground that the acts which had been performed in behalf of the confederacy were acts which were void *ab initio*; and there is no better settled principle of law than that no void or illegal act can overturn or destroy that which was legal, and therefore every movement of the southern people with reference to furthering or carrying into effect the machinery of the confederate government was without authority of law, and was in violation of the government, which the President of the United States was bound to uphold by all the means in his power. And he was authorized to put down all the forms of State government which the people of the South had adopted to sustain the cause of the confederacy. When those forms had been put down, then the status of those States, as it existed before the rebellion commenced, returned to them, except so far as regards what was declared to be the cornerstone of the rebellion, which was put in issue, and which went down with the rebellion under the military power of the United States.

Mr. WILSON, of Iowa. I do not see that the gentleman from New Jersey has answered one question which I put to him. That question was, whether the insurgent States, prior to the rebellion, had republican forms of government.

Mr. ROGERS. I say they had.

Mr. WILSON, of Iowa. The gentleman said that the surrender of the rebel armies revived the State governments that were in force before the rebellion.

Mr. ROGERS. Yes, sir.

Mr. WILSON, of Iowa. Consequently each one of those States, upon the surrender of the rebel armies, had a republican form of government, which had been revived.

Mr. ROGERS. Exactly.

Mr. WILSON, of Iowa. Now, I wish to ask the gentleman where the President gets the power to require those States to change the republican forms of government which they already had.

Mr. ROGERS. I say he did not require them to change their republican forms of government. Neither slavery nor the rebel debt was any part of their State government; no act of the southern people in aid of the confederacy was a part of their republican form of government. Therefore, I say that republican forms of government did exist and were not affected by the action of the President. The President is not to be called a usurper of power because he did not allow the people of the South to continue that which they had established in aid of the confederacy. All that he did, and all that he wanted to do, was to resuscitate their republican forms of government and to give full vigor to the voice of the people under them.

Mr. GRINNELL. Why does not the gentleman answer the question of my colleague, [Mr. WILSON?]

Mr. ROGERS. I do answer it. I say that Andrew Johnson has not acted in conflict with the Constitution. And I say he is not in the hands of the Democratic party. He never has appointed a Democrat to office; all his patronage is given to the party that elected him. And he is going to fight this battle out in the lines of the so-called Union party. And I tell you that eighteen hundred thousand Democrats will follow him or any other man who holds out to them the unfolded leaves of the Constitution and enunciates the doctrines and principles upon which the liberties of our country are founded.

Mr. DRIGGS. I understood the gentleman from New Jersey to say that he never was in favor of slavery; that he was always opposed to it. If the gentleman is sincere in that declaration, and I have no doubt he is, then I would ask him why he opposed the amendment to the Constitution by means of which we were enabled to get rid of slavery in a constitutional way.

Mr. ROGERS. Because I took the ground here, as the Speaker well knows, both that winter and the winter

before, that there was nothing in the Constitution which gave us power over the subject; that it was a reserved right of the States, not delegated to the United States, to control their domestic institutions exclusively in accordance with their own judgment. Another reason for my course then was that the rebellion was not ended, and I believed it would tend to alienate the affections of the people of the South and lead them to continue longer in war against the Union; not that I had any doubt that the Union armies would finally succeed.

Now, sir, when the gentleman from Illinois [Mr. INGERSOLL] expresses a wish that Andrew Johnson had been swallowed in the Red sea of destruction, like Pharaoh and his hosts, it is a wish which, it appears to me, an American Representative should blush to utter. Sir, does a noble, patriotic President deserve to be spoken of in this manner simply because he is exercising his constitutional power to vindicate the great doctrines of civil liberty upon which the welfare and the progress of this country depend?

Sir, gentlemen are mistaken when they imagine that the American people can ever be brought to sympathize with the revolutionary doctrines of the disunionists which they have advocated in this Congress, doctrines which proclaim the dismemberment of the country and declare in effect that the country's flag, with its brilliant galaxy of stars, representing in undiminished number our grand sisterhood of States, is a "flaunting lie." Sir, the people of this nation, who have fought to maintain the integrity of our Union and the perpetuity of the Constitution, recognize in the policy of Andrew Johnson the great principles for which they have been battling; and they will never consent that those principles shall be trampled under foot by disunionists of either the South or the North.

Sir, I believe that the principles which Andrew Johnson is so nobly defending will be successfully vindicated, and that notwithstanding the denunciation and the calumny to which he is at this hour subjected, his memory will be honorably handed down to future generations, and posterity will thank him for planting the policy of the Government firmly upon those principles which are destined to conduct this nation to a grand and illustrious destiny; and like Washington, his name will be recorded in history as the deliverer of thirty million people from threatened bondage and despotism, whose record will be read by generations unborn as a bright monument of civil liberty, to whose name the great and the good, so long as free Governments exist, will do honor. His tomb will be visited and his remains in death revered as a solemn duty of a grateful people. May God give him a strength, wisdom, power, and influence to work out his great mission, and save him from the hand of the assassin, that he may be spared to see the Union of our fathers, the grandest and most united of any in the world, marching on in defense of the Constitution as the brightest jewel vouchsafed to man, until the dying gaze of his last look upon earth shall be brightened by the burning flame of the Union's cause, with fanaticism, radicalism, and disunionism dead and gone.

Mr. ASHLEY, of Ohio, obtained the floor, but yielded to

Mr. WILSON, of Iowa, who moved that the House adjourn.

The motion was agreed to; and thereupon (at five o'clock p. m.) the House adjourned.

RECONSTRUCTION COMMITTEE.

Mr. BOYER submitted the following preamble and resolution, upon which he demanded the previous question, and called for the yeas and nays:

Whereas the joint committee of fifteen on reconstruction reported on the 30th ultimo, after the arduous labors of five months' continuous incubation, a well-matured plan of "how not to do it," in which they have fully met the expectations of the country, which is as much as ought ordinarily to be demanded of any committee: Therefore,

Resolved by the house of Representatives (the Senate concurring,) That said joint committee be discharged.

Mr. BROMWELL. I move to lay that resolution on the table.

Mr. LE BLOND. I demand the yeas and nays on that motion.

The yeas and nays were ordered.

The question was taken; and it was decided in the affirmative—yeas 100, nays 24, not voting 59; as follows:

YEAS—Messrs. Alley, Allison, Ames, Anderson, Delos R. Ashley, James M. Ashley, Baker, Baldwin, Banks, Baxter, Beaman, Benjamin, Bidwell, Bingham, Blow, Pontwell, Bramwell, Broomall, Reader W. Clarke, Sidney Clarke, Cobb, Conkling, Cook, Cullom, Defrees, Deming, Dixon, Dodge, Donnelly, Driggs, Dumont, Eckley, Eliot, Farnsworth, Ferry, Garfield, Griswold, Abner C. Harding, Hart, Henderson, Holmes, Hotchkiss, Asahel W. Hubbard, James Humphrey, Jenckes, Julian, Kasson, Kelley, Kelso, Ketcham, Laflin, Latham, George V. Lawrence, William Lawrence, Loan, Longyear, Lynch, McClurg, McIndoe, McKee, McRuer, Mercur, Miller, Morrill, Morris, Moulton, Myers, O'Neill, Orth, Paine, Perham, Pike, Plants, William H. Randall, Raymond, John H. Rice, Hollins, Sawyer, Schenck, Scofield, Shellabarger, Spalding, Stevens, Stilwell, Francis Thomas, John L. Thomas, Trowbridge, Upson, Van Aernam, Burt Van Horn, Warner, Elihu B. Washburne, Henry D. Washburn, William B. Washburn, Welker, Whaley, William, James F. Wilson, Windom, and Woodbridge—100.

NAYS—Messrs. Boyer, Coffroth, Dawson, Denison, Eldridge, Finck, Glossbrenner, Crider, Aaron Harding, Harris, Kerr, Le Blond, Marshall, Niblack, Radford, Samuel J. Randall, Ritter, Rogers, Shanklin, Sitgreaves, Strouse, Taylor, Thornton, and Winfield—24.

NOT VOTING—Messrs. Ancona, Barker, Bergen, Blaine, Brandege, Buckland, Bundy, Chattier, Culver, Darling, Davis, Dawes, Delano, Eggleston, Farquhar, Goodyear, Grinnell, Hale, Hayes, Higbe, Hill, Hogan, Hooper, Chester D. Hubbard, Demas Hubbard, John H. Hubbard, Edwin N. Hubbell, James R. Hubbell, Hulburd, James M. Humphrey, Ingersoll, Johnson, Jones, Kuykendall, Marston, Marvin, McCullough, Moorhead, Newell, Nicholson, Noell, Patterson, Phelps, Pomeroy, Price, Alexander, Rice, Moss, Rousseau, Sloan, Smith, Starr, Taber, Thayer, Trimble, Robert T. Van horn, Ward, Wentworth, Stephen F. Wilson, and Wright—9.

So the resolution was laid on the table.

RECONSTRUCTION.

Mr. STEVENS. Mr. Speaker, as tomorrow has been fixed for taking up the report of the joint committee on reconstruction, I wish to suggest, inasmuch as it has been largely dismissed, and there are still a considerable number of members who wish to speak, the speeches on that subject shall be confined to thirty minutes. Though on our part we have the laboring oar, yet I am satisfied we shall be limited to thirty minutes, so that a larger number of members may be heard. If there be no particular objection, I shall offer the following resolution. If there is any great objection, I do not intend to press it. I want the constitutional amendment sent to the Senate, to see what they will do with it.

The Clerk read as follows:

Resolved, That during the discussion of the constitutional amendment proposed by the committee no speech shall exceed thirty minutes, nor shall the motion to extend the time of any member be entertained.

Mr. ROSS. That will not prevent a motion to print.

The SPEAKER. It will not.

Mr. RAYMOND. I beg to inquire of the gentleman from Pennsylvania whether it would not suit the convenience of the committee and the House to let that question lie over until the tax bill shall have been disposed of. If we go on with the tax bill to-day, and to-morrow with the report on reconstruction, it will leave a gap in the discussion. We may finish the tax bill in two or three days.

Mr. STEVENS. We have to some extent considered that. We think it important this should pass and be sent to

the Senate so they may have it before them. We then propose the accompanying bills shall be postponed to suit the convenience of the House so that the tax bill or any other may be proceeded with.

Mr. BINGHAM. I hope there will be no such postponement.

Mr. NIBLACK. I desire to know whether an opportunity will be afforded to offer amendments to the proposed constitutional amendment.

Mr. STEVENS. This has of course nothing to do with that question. We intend to be liberal in allowing time for discussion. I only offer this so a larger number of gentlemen may be heard before it becomes necessary to close debate. The discussion must be brought to a close within a reasonable time. We desire to be liberal. We have already discussed the question so much that I think thirty minutes will be long enough.

Mr. BANKS. Mr. Speaker, I suppose this series of measures is proposed in good faith as a means of settling the difficulties of the country. The committee has taken a long time to consider the subject, but not too long, but there ought to be some opportunity given to discuss it. I do not think any time expended in the discussion of these measures, either for or against them, is time lost to the country. It will be discussed and understood by the people, and it is much better for the committee as well as for the House, that the discussion here should be full and thorough. I hope the gentleman will not press for is limitation of discussion until the House shall have shown at least a tendency, if not a disposition, to consume time improperly.

Mr. STEVENS. The gentleman knows we can only make this arrangement to-day.

Mr. SCOFIELD. How many gentlemen have signified their intention to speak?

Mr. STEVENS. Oh, there is a list as long as my arm. [Laughter.]

Mr. ELDRIDGE. Do we understand the proposition to be that we are to consider the three measures that are proposed as one subject? It is thought by gentlemen on this side that these three measures are in fact one, and that the discussion ought to be had upon them all together. I think we may as well discuss the constitutional amendment and the other two measures at the same time rather than discuss them separately. They were reported as a series of measures upon the same subject.

Mr. STEVENS. I will say to the gentleman that as different days are fixed for the hearing of the different measures the subject must properly be considered in that way. We cannot take them up and pass them all together. I will say, however, that if the first measure is acted upon, whether passed or defeated, it is expected, if the House desire it, that the fairest debate shall be allowed on the other measures also. But the debate which I now propose to limit to thirty minutes is only on the one measure.

Mr. FINCK. I desire to inquire of the gentleman whether he has in his own mind fixed any time when he will call the previous question upon this; proposed amendment to the Constitution. I would like to know how long the discussion is likely to be permitted to continue.

Mr. STEVENS. I have not. I intended to be governed by the desire of the House very much in regard to that, allowing a very candid discussion. I am sure it will not be asked to procrastinate it factiously.

Mr. FINCK. Certainly not.

Mr. STEVENS. On our part, I can only speak for one, it is the intention to allow the largest and fairest debate desired by any member of the House.

Mr. FINCK. That is satisfactory.

The SPEAKER. Is there objection to the consideration of the resolution?

Mr. BANNIS. I object.

Mr. STEVENS. I move to suspend the rules for the purpose of introducing the resolution.

Mr. SCHENCK. Before that question is put I desire to make a suggestion. The gentleman from Pennsylvania [Mr. STEVENS] intimated his purpose after having disposed of the main proposition, the amendment to the Constitution, to defer the consideration of the other special orders which are to follow in their turn. Now, regarding these different measures as gentlemen on the other side say, all as part of one whole, I trust when we enter upon the consideration of this business in one of its parts we will continue until the whole matter is disposed of. I merely make this remark now so as not to be considered as concluded or as having been understood to agree to any proposition of that kind which is thrust upon us now.

Mr. STEVENS. I do not propose to do anything except what the House may desire.

The motion to suspend the rules was agreed to, two thirds voting in favor thereof.

The question recurred on agreeing to the resolution.

Mr. ASHLEY, of Ohio. I suggest to the gentleman to modify the resolution so as to provide that at the evening session speeches may be made of an hour's duration.

Several Members. Oh, no.

Mr. STEVENS. I desire that the evening session shall be for action. I call the previous question.

The SPEAKER. The House has prescribed a "morning hour" in the morning and evening session both.

Mr. RANDALL, of Pennsylvania. Is it provided for yet in the evening?

The SPEAKER. It is not provided for yet, but the House has ordered that whenever an evening session shall be held the first hour shall be considered the same as a "morning hour." During the debate on the constitutional amendment that will be the first business in the morning after the reading of the Journal, so that there will practically be no morning hour.

Mr. LE BLOND. I suggest to the gentleman from Pennsylvania whether he had not better amend his resolution so as to embrace the other two propositions coming from the committee so as to limit debate on each one to half an hour.

Mr. STEVENS. I do not know that I understand the suggestion—whether the gentleman desires that the thirty minutes shall apply to them all; but at present I do not wish to compel members to discuss three questions in the thirty minutes.

Mr. RADFORD. I would suggest the propriety of striking out the last part of the resolution prohibiting the extension of time to any gentleman.

Mr. STEVENS. I cannot do that. We have nullified the hour rule already, so that it amounts to nothing; and I do not want the rule nullified when it reduces the time to thirty minutes.

The previous question was seconded and the main question ordered; and under the operation thereof the resolution was agreed to.

Mr. STEVENS moved to reconsider the vote by which the resolution was adopted; and also

moved that the motion to reconsider be laid upon the table.

The latter motion was agreed to.

RECONSTRUCTION.

The SPEAKER stated the first business in order to be the consideration of the constitutional amendment reported by the joint committee on reconstruction.

Mr. GARFIELD. I move that that special order be postponed, and that the House proceed to the consideration of the tax bill. I do this for the reason that I believe in three or four days at the farthest we can finish the tax bill. If we enter now into the discussion of the constitutional amendment it will bring up the entire subject of reconstruction, and the debate will run on for three or four weeks. It seems to me to be almost a national calamity to delay the tax bill that long. I call for the previous question.

Mr. STEVENS. I hope there will be no such disposition made of the special order. I have no idea that the constitutional amendment will take up more than two or three days. It ought to be in the Senate at once, if it is ever to be acted on. As to the tax bill, we will not lose anything by letting it lie over. Some additions have been recently made to it which I have not had time to read. We have set apart the night sessions for the consideration of that bill.

Mr. WASHBURNE, of Illinois. I understand it was the agreement of the House yesterday that the constitutional amendment should be considered during the day and the tax bill during the evening.

Mr. GARFIELD. I do not think that was the understanding. It was not mine.

The SPEAKER. To what time does the gentleman propose to postpone it?

Mr. GARFIELD. Until the tax bill has been disposed of.

Mr. STEVENS. I move that that motion be laid upon the table.

Mr. RAYMOND. In case we do not finish the constitutional amendment to-day, will it be superseded by the proposition made the special order for to-morrow?

The SPEAKER. The constitutional amendment remains the special order until disposed of.

Mr. STEVENS. I withdraw my motion to lay upon the table.

I will say that the intention is not to press the accompanying bills until this constitutional amendment has been disposed of by the Senate.

Mr. JENCKES. I ask the gentleman from Ohio to modify his motion so that we may have the day for the tax bill, and the evening for reconstruction.

The SPEAKER. That will require unanimous consent.

Mr. GARFIELD. I am willing to agree to that.

Mr. STEVENS. I object.

Mr. GARFIELD. Then I insist on my motion and demand the previous question.

The previous question was seconded and the main question ordered.

Mr. LE BLOND. I demand the yeas and nays. I want to see whether the negro shall have preference of the finances.

The yeas and nays were ordered.

The question was taken; and it was decided in the negative—yeas 51, nays 82, not voting 50; as follows;

YEAS—Messrs. Anderson, Delos R. Ashley, Barker, Bergen, Boyer, Chanter, Coffroth, Darling, Dawes, Dawson, Denison, Eldridge, Finck, Garfield, Glossbrenner, Goodyear, Grider, Griswold, Aaron Harding, Harris, James Humphrey, Jenckes, Kasson, Kerr, Latham, LeBlond, Marshall, McCullough, Moorhead, Niblack, Patterson, Phelps, Pike, Radford, Samuel J. Randall, Raymond, Ritter, Ross, Rousseau, Shanklin, Stilwell, Strouse, Taber, Taylor, Thayer, Thornton, Robert T. Van Horn, Henry D. Washburn, William B. Washburn, Whaley, and Williams—51.

NAYS—Messrs. Alley, Ames, James M. Ashley, Baker, Baldwin, Banks, Baxter, Beaman, Benjamin, Bidwell, Bingham, Blow, Bromwell, Broomall, Buckland, Bundy, Reader W. Clarke, Cobb, Conklin, Cullom, Defrees, Deming, Dixon, Dodge, Donnelly, Driggs, Eckley, Eliot, Farnsworth, Ferry, Abner C. Harding, Hart, Hayes, Henderson, Higby, Holmes, Hotchkiss, Asahel W. Hubbard, James R. Hubbell, Hulburd, Ingersoll, Julian, Kelley, Kelso, Ketcham, Kuykendall, Laflin, George V. Lawrence, William Lawrence, Longyear, Lynch, McIndoe, McKee, McRuer, Mercur, Miller, Morris, Moulton, O'Neill, Orth, Perham, Plants, William H. Randall, Alexander H. Rice, John H. Rice, Rollins, Sawyer, Schenck, Scofield, Shellabarger, Spalding, Stevens, John L. Thomas, Trowbridge, Upson, Van Aernam, Burt Van Horn, Warner, Eliu B. Washburne, Welker, Stephen F. Wilson, and Windom—82.

NOT VOTING—Messrs. Allison, Ancona, Blaine, Boutwell, Brandegee, Sidney Clarke, Cook, Culver, Davis, Delano, Dumont, Eggleston, Farquhar, Grinnell, Hale, Hill, Hogan, Hooper, Chester D. Hubbard, Demas

Hubbard, John H. Hubbard, Edwin N. Hubbell, James M. Humphrey, Johnson, Jones, Loan, Marston, Marvin, McClurg, Morrill, Myers, Newell, Nicholson, Noell, Paine, Pomeroy, Price, Rogers, Sitgreaves, Sloan, Smith, Starr, Francis Thomas, Trimble, Ward, Wentworth, James F. Wilson, Winfield, Woodbridge, and Wright-50.

So the House refused to postpone the special order.

Mr. WASHBURN, of Illinois. I ask the gentleman from Pennsylvania to yield to allow me to offer a resolution.

Mr. STEVENS. I will yield if it does not come out of my time.

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RECONSTRUCTION—AGAIN.

Mr. STEVENS. The short time allowed by our resolution will suffice to introduce this debate. If unexpectedly there should be any objection to the proposed amendment to the Constitution I may ask the indulgence of the House to reply.

The committee are not ignorant of the fact that there has been some impatience at the delay in making this report; that it existed to some extent in the country as well as among a few members of the House. It originated in the suggestions of faction, no doubt, but naturally spread until it infected some good men. This is not to be wondered at or complained of. Very few could be informed of the necessity for such delay. Beside, we are not all endowed with patience; some men are naturally restive, especially if they have active minds and deep convictions.

But I beg gentlemen to consider the magnitude of the task which was imposed upon the committee. They were expected to suggest a plan for rebuilding a shattered nation—a nation which though not dissevered was yet shaken and riven by the gigantic and persistent efforts of six million able and ardent men; of bitter rebels striving through four years of bloody war. It cannot be denied that this terrible struggle sprang from the vicious principles incorporated into the institutions of our country. Our fathers had been compelled to postpone the principles of their great Declaration, and wait for their full establishment till a more propitious time. That time ought to be present now. But the public mind has been educated in error for a century. How difficult in a day to unlearn it. In rebuilding, it is necessary to clear away the rotten and defective portions of the old foundations, and to sink deep and found the repaired edifice upon the firm foundation of eternal justice. If, perchance, the accumulated quicksands render it impossible to reach in every part so firm a basis, then it becomes our duty to drive deep and solid the substituted piles on which to build. It would not be wise to prevent the raising of the structure because some corner of it might be founded upon materials subject to the inevitable laws of mortal decay. It were better to shelter the household and trust to the advancing progress of a higher morality and a purer and more intelligent principle to underpin the defective corner.

I would not for a moment inculcate the idea of surrendering a principle vital to justice. But if full justice could not be obtained at once I would not refuse to do what is possible. The commander of an army who should find his enemy intrenched on impregnable heights would act unwisely if he insisted on marching his troops full in the face of a destructive fire merely to show his courage. Would it not be better to flank the works and march round and round and besiege, and thus secure the surrender of the enemy, though it might cost time? The former course would show valor and folly; the latter moral and physical courage, as well as prudence and wisdom.

This proposition is not all that the committee desired. It falls far short of my wishes, but it fulfills my hopes. I believe it is all that can be obtained in the present state of public opinion. Not only congress but the several States are to be consulted. Upon a careful survey of the whole ground, we did not believe that nineteen of the loyal States could be induced to ratify any proposition more stringent than this. I say nineteen, for I utterly repudiate and scorn the idea that any State not acting in the Union is to be counted on the question of ratification. It is absurd to suppose that any more than three fourths of the States that propose the amendment are required to make it valid; that States not here are to be counted as present. Believing, then, that this is the best proposition that can be made effectual, I accept it. I shall not be driven by clamor or denunciation to throw away a great good because it is not perfect. I will take all I can get in the cause of humanity and leave it to be perfected by better men in better times. It may be that that time will not come while I am here to enjoy the glorious triumph; but that it will come is as certain as that there is a just God.

The House should remember the great labor which the committee had to perform. They were charged to inquire into the condition of eleven States of great extent of territory. They sought, often in vain, to procure their organic laws and statutes. They took the evidence of every class and condition of witness, from the rebel vice president and the commander-in-chief of their armies down to the humblest freedman. The sub-committees who were charged with that duty—of whom I was not one, and can therefore speak freely—exhibited a degree of

patience and diligence which was never excelled. Considering their other duties, the mass of evidence taken may well be considered extraordinary. It must be remembered, also, that three months since, and more, the committee reported and the House adopted a proposed amendment fixing the basis of representation in such way as would surely have secured the enfranchisement of every citizen at no distant period. That, together with the amendment repudiating the rebel debt, which we also passed, would have gone far to curb the rebellious spirit of secession, and to have given to the oppressed race their rights. It went to the other end of the Capitol, and was there mortally wounded in the house of its friends.

After having received the careful examination and approbation of the committee, and having received the united Republican vote of one hundred and twenty Representatives of the people, it was denounced as "utterly reprehensible," and "unpardonable;" "to be encountered as a public enemy;" "positively endangering the peace of the country, and covering its name with dishonor." "A wickedness on a larger scale than the crime against Kansas or the fugitive slave law; gross, foul, outrageous; an incredible injustice against the whole African race;" with every other vulgar epithet which polished cultivation could command. It was slaughtered by a puerile and pedantic criticism, by a perversion of philological definition which, if when I taught school a lad who had studied Lindley Murray had assumed, I would have expelled him from the institution as unfit to waste education upon. But it is dead, and unless this (less efficient, I admit) shall pass, its death has postponed the protection of the colored race perhaps for ages. I confess my mortification at its defeat. I grieved especially because it almost closed the door of hope for the amelioration of the condition of the freedmen. But men in pursuit of justice must never despair. Let us again try and see whether we cannot devise some way to overcome the united forces of self-righteous Republicans and unrighteous copperheads. It will not do for those who for thirty years have fought the beasts at Ephesus to be frightened by the fangs of modern catamounts.

Let us now refer to the provisions of the proposed amendment.

The first section prohibits the States from abridging the privileges and immunities of citizens of the United States, or unlawfully depriving them of life, liberty, or property, or of denying to any person within their jurisdiction the "equal" protection of the laws.

I can hardly believe that any person can be found who will not admit that every one of these provisions is just. They are all asserted, in some form or other, in our DECLARATION or organic law. But the Constitution limits only the action of Congress, and is not a limitation on the States. This amendment supplies that defect, and allows Congress to correct the unjust legislation of the States, so far that the law which operates upon one man shall operate *equally* upon all. Whatever law punishes a white man for a crime shall punish the black man precisely in the same way and to the same degree. Whatever law protects the white man shall afford "equal" protection to the black man. Whatever means of redress is afforded to one shall be afforded to all. Whatever law allows the white man to testify in court shall allow the man of color to do the same. These are great advantages over their present codes. Now different degrees of punishment are inflicted, not on account of the magnitude of the crime, but according to the color of the skin. Now color disqualifies a man from testifying in courts, or being tried in the same way as white men. I need not enumerate these partial and oppressive laws. Unless the Constitution should restrain them those States will all, I fear, keep up this discrimination, and crush to death the hated freedmen. Some answer, "Your civil rights bill secures the same things." That is partly true, but a law is repealable by a majority. And I need hardly say that the first time that the South with their copperhead allies obtain the command of Congress it will be repealed. The veto of the President and their votes on the bill are conclusive evidence of that. And yet I am amazed and alarmed at the impatience of certain well-meaning Republicans at the exclusion of the rebel States until the Constitution shall be so amended as to restrain their despotic desires. This amendment once adopted cannot be annulled without two thirds of Congress. That they will hardly get. And yet certain of our distinguished friends propose to admit State after State before this becomes a part of the Constitution. What madness! Is their judgment misled by their kindness; or are they unconsciously drifting into the haven of power at the other end of the avenue? I do not suspect it, but others will.

The second section I consider the most important in the article. It fixes the basis of representation in Congress. If any State shall exclude any of her adult male citizens from the elective franchise, or abridge that right, she shall forfeit her right to representation in the same proportion. The effect of this provision will be either to compel the States to grant universal suffrage or so to shear them of their power as to keep them forever in a hopeless minority in the national Government, both legislative and executive. If they do not enfranchise the freedmen, it would give to the rebel States but thirty-seven Representatives. Thus shorn of their power, they would soon become restive. Southern pride would not long brook a hopeless minority. True it will take two, three, possibly five years before they conquer their prejudices sufficiently to allow their late slaves to become their

equals at the polls. That short delay would not be injurious. In the mean time the freedmen would become more enlightened, and more fit to discharge the high duties of their new condition. In that time, too, the loyal Congress could mature their laws and so amend the Constitution as to secure the rights of every human being, and render disunion impossible. Heaven forbid that the southern States, or *any one of them*, should be represented on this floor until such muniments of freedom are built high and firm. Against our will they have been absent for four bloody years; against our will they must not come back until we are ready to receive them. Do not tell me that there are loyal representatives waiting for admission—until their States are loyal they can have no standing here. They would merely misrepresent their constituents.

I admit that this article is not as good as the one we sent to death in the Senate. In my judgment, we shall not approach the measure of justice until we have given every adult freedman a homestead on the land where he was born and toiled and suffered. Forty acres of land and a hut would be more valuable to him than the immediate right to vote. Unless we give them this we shall receive the censure of

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mankind and the curse of Heaven. That article referred to provided that if *one* of the injured race was excluded the State should forfeit the right to have any of them represented. That would have hastened their full enfranchisement. This section allows the States to discriminate among the same class, and receive proportionate credit in representation. This I dislike. But it is a short step forward. The large stride which we in vain proposed is dead; the murderers must answer to the suffering race. I would not have been the perpetrator. A load of misery must sit heavy on their souls.

The third section may encounter more difference of opinion here. Among the people I believe it will be the most popular of all the provisions; it prohibits rebels from voting for members of Congress and electors of President until 1870. My only objection to it is that it is too lenient. I know that there is a morbid sensibility, sometimes called mercy, which affects a few of all classes, from the priest to the clown, which has more sympathy for the murderer on the gallows than for his victim. I hope I have a heart as capable of feeling for human woe as others. I have long since wished that capital punishment were abolished. But I never dreamed that all punishment could be dispensed with in human society. Anarchy, *treason*, and violence would reign triumphant. Here is the mildest of all punishments ever inflicted on traitors. I might not consent to the extreme severity denounced upon them by a provisional governor of Tennessee—I mean the late lamented Andrew Johnson of blessed memory—but I would have increased the severity of this section. I would be glad to see it extended to 1876, and to include all State and municipal as well as national elections. In my judgment we do not sufficiently protect the loyal men of the rebel States from the vindictive persecutions of their victorious rebel neighbors. Still I will move no amendment, nor vote for any, lest the whole fabric should tumble to pieces.

I need say nothing of the fourth section, for none dare object to it who is not himself a rebel. To the friend of justice, this friend of the Union, of the perpetuity of liberty, and the final triumph of the rights of man and their extension to every human being, let me say, sacrifice as we have done your peculiar views, and instead of vainly insisting upon the instantaneous operation of all that is right accept what is possible, and "all these things shall be added unto you."

I move to recommit the joint resolution to the committee on reconstruction.

Mr. BLAINE. I do not rise to discuss the proposition, but to ask of the honorable chairman of the committee a question, an answer to which, I am sure, will afford gratification and satisfaction to me, and doubtless to other members of the House. It relates to the third section of the proposed constitutional amendment, which is in these words:

Sec. 3. Until the 4th day of July, in the year 1870, all persons who voluntarily adhered to the late insurrection, giving it aid and comfort, shall be excluded from the right to vote for Representatives in Congress and for electors for President and Vice President of the United States.

Now, the question in my mind, upon which I respectfully ask for information, is whether this may not involve us in a position of bad faith. On the 17th of July, 1862, an act was approved, entitled "An act to suppress insurrection, to punish treason, to seize and confiscate the property of rebels, and for other purposes," of which the thirteenth section is in these words:

"That the President is hereby authorized at any time hereafter, by proclamation, to extend to persons who may have participated in the existing rebellion, in any State or part thereof, pardon and amnesty, with such exceptions and at such times and on such conditions as he may deem expedient for the public welfare."

Under and in pursuance of this act the late President Lincoln issued a proclamation granting a great number of pardons upon certain specified conditions. Hundreds and perhaps thousands of pardons were granted by Mr. Lincoln during the years 1863 and 1864. Subsequently, and as late as the early summer of 1865, President Johnson issued his celebrated amnesty proclamation granting pardons and immunities to certain specified classes in the South that had participated in the rebellion with a military rank under colonel, and excepting certain classes from the benefits of his clemency.

Now, I am perfectly aware that as matter of strict law the deprivation of the elective franchise may not be regarded as a punishment, and therefore no violation of the immunities conveyed by the pardon. But as a matter of fact these pardons have been given and accepted with the full understanding that the recipients were thereby fully restored to all the rights and privileges of citizenship, and do we not by the proposed action place ourselves in the attitude of taking back by constitutional amendment that which has been given by act of Congress and by presidential proclamation issued in pursuance of law? And will not this course be justly subject to the charge of bad faith on the part of the Federal Government?

Mr. STEVENS. I will answer that question. I do not know if the gentleman is a lawyer, but I suppose he has examined this question. A pardon, whether by the President having the power, or specially by act of Parliament or Congress, extinguishes the crime. After that there is no such crime in the individual. A man steals; he is pardoned; he is not then a thief, and you cannot call him a thief, or if you do you are liable to an action for slander. None of those who have been fully pardoned are affected by this provision.

Mr. BLAINE, Then I must say if the gentleman answers the question in that way that he puts a strange construction on the section. I will read it again. It is as follows:

Sec. 3. Until the 4th day of July, 1870, all persons who voluntarily adhered to the late insurrection giving it aid and comfort, shall be excluded from the right to vote for Representatives in Congress and for electors for President and Vice President of the United States.

Now, I understand the distinguished gentleman from Pennsylvania to say that those under the rank of colonel who were pardoned will not be considered as having "adhered" to the rebellion, and that this will not apply to them, or in any way affect them. This certainly is a very strange construction, and it seems to me that it effectually nullifies what has been understood as the intent and purpose of the section. In that view the section is worthless; and in the view I have given it involves bad faith.

Mr. STEVENS. The law says that a man convicted of felony shall not testify. You call him as a witness; the objector shows his conviction; he shows his pardon; and he is not a felon.

Mr. BLAINE. The gentleman from Pennsylvania will excuse me. There is no pardon that can be shown in this case.

Mr. STEVENS. Oh, yes; there is a pardon.

Mr. BLAINE. There was no pardon granted except by the proclamation. These men have no pardons which they can produce in court as a malefactor can. A vast class was pardoned by wholesale, and being pardoned, they stand to-day just as well in point of civil rights and privileges as they did before the rebellion. Now, I maintain that this constitutional amendment would lead to serious misunderstanding throughout the entire South.

Mr. STEVENS. Of course the fact of having complied with the conditions of pardon will be shown.

Mr. BLAINE. But there were no conditions.

Mr. STEVENS. Oh, yes, there were.

Mr. BLAINE. President Johnson's proclamation pardoned all below a certain rank in the rebel army. Mr. Lincoln, I know, did exact conditions; and if there were no proclamation out except that of Mr. Lincoln, why, of course, there could be no misunderstanding. But I want the gentleman to observe the phraseology of the act of 1862, for it was evidently written with a view to being applied after the war should have ceased. It says:

"The President is hereby authorized at any time hereafter, by proclamation, to extend to persons who may have participated in the existing rebellion, in any State or part thereof, pardon," &c.

It alluded to a future time when the rebellion should be suppressed. That future time has been reached. The rebellion was concluded and its armies dispersed, and President Johnson, in direct and literal pursuance of law, issued his proclamation pardoning all that class below the rank of colonel who had participated in the rebellion.

Now, this constitutional amendment would be held to override the President's proclamation, being organic in its nature and supreme. I understand, to use the cant phrase of the day, that it "goes back" on these men, and deprives them of the civil rights which this full pardon restored to them. That is my understanding, and that, it seems to me, would be the legal construction. But if the gentleman from Pennsylvania is correct, and it does not apply to that class of men, then I maintain that it is the bounden duty of the House to make the language so plain

that "he who runs may read," and that there may be no doubt about its construction.

Mr. STEVENS. I have only to say, again, that whenever a man can show a full pardon, no penalty can be inflicted.

Mr. BLAINE. I desire to make no motion at this time, but if this provision is to be left, according to the construction which I have given it, what I think is the obvious one, or according to the construction which the gentleman from Pennsylvania has given it, which, it seems to me, would lead to infinite mischief and complication, I shall avail myself, at the proper time, of the right to move to strike it out.

Mr. FINCK. Mr. Speaker, I promise to trespass upon the attention of the House but a very few minutes in what I have to say on this question.

An amendment to the Constitution is at all times a matter of grave importance, and should command calm and patient deliberation.

It is of the last importance to the prosperity and happiness of a people that stability in the great organic laws of the nation should be maintained. Amendments sometimes, I agree, become necessary to the constitution of every nation; but they should not be hurriedly made and never without considering the interests and opinions of the whole people.

To me, Mr. Speaker, this of all other seems the most inauspicious time to propose or make changes in our Constitution.

We are just at the close of the most stupendous war which has ever scourged any nation, and the passions and alienations which have been engendered by this strife have not yet completely passed away.

The amendments proposed are to affect the people of this whole country, but more especially are they intended to affect the people of the States lately in insurrection; and it would seem not only to be an act of even-handed justice, but of the highest wisdom, if we would consult the teachings of the wise and pure men who established our Government, that these people should have an opportunity of considering and discussing these amendments here, and to record their votes through their representatives either for or against them before they are finally submitted to the States for their action. Now, what is the condition in which we to-day find ourselves?

The war terminated over a year ago. The people of the late insurgent States have fully and completely yielded obedience to the Constitution and laws of the United States. Their State governments are completely restored. Their courts are in the full exercise of their jurisdiction, and profound peace reigns throughout our borders. To show that these people are in earnest, and acting in good faith, I need only refer to the fact that they have ratified the

amendment abolishing slavery, abandoned the pretended claim to the right of secession, and elected members of Congress.

But, sir, the men who control this Congress have failed, in my judgment, to meet these people in that true spirit of kindness and forgiveness dictated by a wise and enlarged statesmanship, and which now alone are necessary to restore cordial relations between the two sections.

At the commencement of this session a most extraordinary resolution was adopted, creating a joint committee of fifteen on reconstruction, and to which it was ordered that everything relating to the admission of members from the late insurgent States should be referred, and none of their representatives were to be admitted until this committee should report on the subject. Thus this House, in the face of that provision of the Constitution, which declares that each House shall be the judge of the elections, returns, and qualifications of its own members, surrendered the exercise of that right to a joint committee, the distinguished chairman of which [Mr. STEVENS] had already pronounced these States conquered territories and their citizens aliens.

We have been advised from time to time, with an air of supreme defiance at the restoration policy of the President, that Congress must first ascertain and declare that these were States really in the Union, with governments republican in form; and that until these things were satisfactorily declared by Congress, no Senator or Representative could be admitted from any of these States.

Well, sir, we have waited, and the country has waited, with feverish anxiety for the period when this committee should report on these questions and the congressional plan should be finally presented. Witnesses have been brought from all parts of the country and examined by the committee, to ascertain and report on the loyalty of the southern people and the condition of their State governments. At last, after five months' labor, this committee has brought in its report, and what information do they bring us? And what do they propose that Congress shall do? Do they tell us whether these States are in or out of the Union; or whether they have

governments republican in form? Not a bit of it. But they report an amendment to the Constitution, containing four or five sections, with two bills accompanying it, and these are to constitute the congressional plan, as opposed to the policy of the President.

The time to which I am limited by the resolution of the house regulating this discussion will prevent me from entering into an elaborate examination of this plan of the committee; and I shall have, therefore, to content myself with a very brief examination of it.

The first section provides that—

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Well, all I have to say about this section is, that if it is necessary to adopt it, in order to confer upon Congress power over the matters contained in it, then the civil rights bill, which the President vetoed, was passed without authority, and is clearly unconstitutional.

The second section provides a new basis for the apportionment of Representatives to Congress, and is substantially the same which was defeated some weeks since in the Senate.

The third section deprives all persons who voluntarily aided in the rebellion from voting for members of Congress and for electors for President and Vice President until the 4th day of July, 1870.

The majority of the committee have made a most wonderful discovery, as disclosed in this third section of the proposed amendment, and have gravely announced to the world that a citizen of the United States who is now entitled to vote, but whose loyalty is suspected, would be an unsafe voter in 1866, or even in the presidential election of 1868, but will, after having his feelings *soothed* and his love of country *encouraged* by being branded as an outlaw and compelled to bear the burdens of Government, in the nicely adjusted and ascertained period of four years from the 4th day of July, 1866, which is a safe and reasonable time after the next presidential election, be converted into a true and loyal citizen, and will by that time become attached to the Government which had disfranchised him, and may then safely be intrusted with the great right of suffrage. Certainly this discovery deserves to be protected by some law.

But, sir, this proposition to disfranchise these people by an amendment to the Constitution, to which you require the consent of the States whose citizens are thus to be disfranchised, is a most solemn admission that you have no authority to do so without such an amendment. I trust gentlemen have no design in this proposition to disfranchise nine tenths of the voters of eleven States, unfairly to perpetuate their political power, or to influence the next presidential election.

The fourth section provides that the rebel debt shall never be paid. Well, I suppose no one can be found in this country silly enough to believe that the rebel debt ever will be paid.

These proposed amendments are accompanied by a bill which constitutes a part of the plan of the committee, the first section of which provides—

That whenever the above recited amendments shall have become part of the Constitution, and any State lately in insurrection shall have ratified the same, and shall have modified its constitution and laws in conformity therewith, the Senators and Representatives from such State, if found duly elected and qualified, *may*, after having taken the required oaths of office, be admitted into Congress.

Also, another bill, which declares—

Certain persons ineligible to office under the Government of the United States.

Here, sir, in these propositions, we have the result of the wisdom and statesmanship of the distinguished gentlemen who compose the majority of the committee; and I say it without intending the least disrespect to these gentlemen, that in the future they will be quite unwilling to fix upon this report as the standard and measure of either their ability or statesmanship. Allow me to say, further, that this committee have had the opportunity, in the most important period of our history, to have inscribed their names among the first statesmen of the age, by a liberal and enlightened policy, which would have bound all sections of this great country together in the strong bond of mutual friendship and a restored Union. But they have let that opportunity pass.

Stripped of all disguises, this measure is a mere scheme to deny representation to eleven States; to prevent indefinitely a complete restoration of the Union and perpetuate the power of a sectional and dangerous party.

I am, Mr. Speaker, in the present attitude of our affairs, opposed to making any amendments to the Constitution; and, beside this objection, I am opposed to the measure under discussion, because it seeks to introduce into our system a principle which is wholly unauthorized, and will, if adopted, I fear, lead to serious difficulties in the future.

What is the theory on which these propositions are based?

This Union is composed of thirty-six States; and by law, in full force, but the provisions of which are defied and utterly disregarded, this House is legally and constitutionally to be composed of two hundred and forty-one members; but we have Representatives here from only twenty-five States, and only one hundred and eighty-four members.

The constitutional number of Senators is two for each State, and when full that body would now consist of seventy-two, while it is in fact, composed of but fifty. So that eleven States are denied all representation in both branches of Congress, although the Constitution provides "that no State, without its consent, shall be deprived of its equal suffrage in the Senate," and the right to representation in the House is equally clear.

But this House by the mere exertion and combination of numbers excludes from its deliberations fifty-seven members and the Senate by the same power excludes twenty-two members from a voice and vote in that Chamber. And it is, sir, in this strange and extraordinary condition of our affairs that we are gravely invited to proceed to change the Constitution in such a manner as to deeply and materially affect every State whose representatives are excluded from Congress; and we are further asked to say to these States thus excluded that if they refuse to debase themselves as equal States in the Union and decline to ratify and approve by affirmative action these changes, that their exclusion shall be perpetual.

I ask gentlemen to pause and reflect before they commit themselves to so monstrous and revolutionary a scheme as this.

I may be deluded and mistaken when I assume that we are still legislating under a Constitution which we have all sworn to support. Or can it be possible that while the forms and provisions of that sacred instrument are still contained in our books, that its whole spirit and binding authority have been destroyed, and that the rich heritage of our fathers, of a free Government regulated by law, has become already a mere machine by which the majority in Congress are left free and untrammelled to do just what they please?

Mr. Speaker, I trust that we are still in possession, not only of the Constitution of our fathers, but that we will be animated and controlled, at least in same degree, by their wisdom and patriotism.

Sir, I deny wholly that there exists under our Constitution any right whatever for any number of States to combine together to exclude the rest from their constitutional representation in Congress, and to say to these States so excluded that they shall only exercise the right of representation on the terms and conditions of adopting certain proposed amendments to the Constitution, because, by the recognition of such a principle you at once sanction the right of three fourths of the States, not to make amendments merely, but to adopt a provision which they may call an amendment, and then drive the remaining one fourth of the States out of the Union, unless they shall also adopt the same proposition.

For that is virtually what is assumed may be done by the proposition of this committee. Nay, more than this is assumed. It is the assertion of the right of three fourths of the States to say to the other fourth, you shall be held in this Union for the purposes of taxation; you shall be subjected to all the burdens and duties of States in the Union, but you shall never be represented in Congress unless you agree to the conditions which we shall see proper to impose on you, although the Constitution expressly declares that "no State without its consent shall be deprived of its equal suffrage in the Senate," and that each State shall have at least one Representative in the House.

Sir, the whole scheme is revolutionary and a most shallow pretext for an excuse to exclude the vote of eleven States in the next presidential election. You cannot exact conditions in this way from any State in the Union; no more from Georgia, than from Massachusetts. They are each equal States in the Union, held together by the same Constitution, neither being the superior of the other in their relation to the Federal Government as States.

I cannot pretend to say, Mr. Speaker, what will be the action of these States, on these proposed changes, but I trust they will have spirit enough left to reject, with firm and manly independence, a scheme which disfranchises a large majority of their citizens and brands with the humiliating marks of inferiority States which are constitutionally the equals of any other

States in this Union. I trust, sir, these people will rally with a united and patriotic purpose around the wise and just policy of Andrew Johnson.

Gentlemen cannot justify themselves in supporting this proposed legislation on the ground that these States are out of the Union, and that therefore this Congress may require such conditions-precedent as they please to their admission. No, sir; these States are not out of the Union. They have never been out of the Union. They have been recognized by the executive and judicial departments of the Government as States in the Union, and

Congress has, by its legislation, more than once during the war fully recognized them as States in the Union, and the very measure which is now proposed to them for their acceptance is a recognition of the fact that they are existing States of the Union; and yet gentlemen who support these propositions put themselves in the attitude of requiring conditions from these States, on which they are to be entitled to representation, which they do not for a moment believe they have a right to exact from New York or Pennsylvania. Sir, these eleven States are in the Union as equal States, and as clearly entitled to representation, as Ohio or Massachusetts. They are to be counted in the number of all the States, three fourths of which are necessary to ratify an amendment to the Constitution. They are so far regarded by this committee as States as to be called upon to exercise one of the highest functions which a State can exercise, namely, to adopt or reject a proposed change in the organic law of the country.

But, sir, a strange spectacle is presented in this measure. States are called upon to deliberate on proposed amendments within their own respective jurisdictions; and these very States are deprived of all opportunity of discussing or voting upon these propositions in Congress, and are States which it is gravely proposed shall not be represented, unless they shall first adopt amendments presented to them by two thirds of the representatives of twenty-five out of the thirty-six States of this Union. And more than all, these States are thus invited to deliberate on the modest demand made of them to disfranchise a large majority of their own citizens, through Legislatures elected or to be elected, by the votes of the very men who are to be disfranchised under this amendment. Sir, the proposition need only be stated to condemn it as anti-republican and wholly at war with all the well-settled principles of a free representative Government.

It is, sir, the assertion of a principle which may embarrass the nation in the future. I trust this Government may continue a free Government for countless generations to come. The life of man is of but short duration, that of a nation is often counted by centuries. And we should remember that it is always unsafe to establish precedents which may disturb the union of these States or sanction a combination of States to impair that perfect equality of the rights of the States as they exist and are secured, under our federative system.

We all know that one of the compromises made by the framers of the Constitution was the recognition of the equality of each State in the Senate; and to fix this equality they provided in the Constitution "that no State, without its consent," should be deprived of its equal suffrage in the Senate.

Well, you not only refuse this constitutional right of equal suffrage in the Senate, but go further, and deny all representation to eleven States in either House of Congress, and propose that the exercise of this plain right, secured by the Constitution to all the States, shall be enjoyed only on such terms and conditions as you may see fit to propose, through a Congress which thus excludes these States.

Gentlemen would do well not to forget that it is possible, if this combination of the majority of the representatives of twenty-five of the thirty-six States, should now be successful, and should be sanctioned by the people, that a generation who may come after us, may deem it best, for the true interest of a country which may then number one hundred million people, and fifty States, to modify the rights of some other States in their representation.

The six New England States have twelve Senators, but have a population less than the single State of New York, and in the next generation will probably have a population less than some of the States in the great valley of the Mississippi, and who can tell but that some other interest may not then form a combination and say to these six States, you have too much power in the Senate for your population, and we can only agree that you shall enjoy the right to be represented in Congress on the condition that you will consent to a reduction of your equal suffrage in the Senate?

Gentlemen from New England might then appeal to the Constitution and to the sanctity of that provision which gives to each State two Senators. But, sir, the answer could be made, and with tremendous force, that the same provision existed from the foundation of the Government; and notwithstanding that fact, these States once, on a memorable occasion in the history of this country, combined to disregard this provision and denied the benefit of this right to eleven of their sister States unless they should first sanction and adopt conditions which the majority had no right to impose; and depend upon it, sir, the appeal, if made to men like those who now control our legislation, would be made in vain.

Sir, this measure is dangerous to our safety. It protracts an unfortunate contest without promising any beneficial results to the harmony and prosperity of the country. The time has come, I most respectfully submit, when the feelings of sectional hate and animosity should give way to the higher and nobler principles of magnanimity, of kindness, conciliation, and true charity.

The people of the United States will never consent to a dissolution of the Union. They have sacrificed too much to preserve it ever to abandon it or sanction measures which will delay the complete restoration of all the

States to their constitutional relations with the Federal Government. It was for this that our brave men fought. For this oceans of blood and treasure were poured out like water; and the man or set of men who may attempt to obstruct or delay the full fruition of the great struggle will be ground into powder by that people whose purposes to maintain the Union and preserve the Constitution are as fixed as our mountains.

Mr. Speaker, the North and the South are destined to live together as one people, in the same Union, and under a common Constitution. Let us, I beseech you, endeavor to live together as true friends and brothers.

Let us rise equal to the great occasion and imitate the noble example of our brave armies in the field, who, when the conflict had ended, no longer regarded the southern people as enemies, but as friends. "Enemies in war, in peace friends." Let us welcome into these Halls representatives from all the States who may be true to the Constitution and the Union; and when all these States shall once more gather around this common council chamber of the nation, then, and not till then, let the great questions of amendment be fairly discussed and voted upon.

Sir, if we shall be true to our destiny, obedient to the great principles of the Constitution and the rights of all the States, this Government will endure, and we shall be enabled to transmit it unimpaired to our children as a priceless heritage, which has come down to us from the men of the Revolution, to be, as I most earnestly pray, perpetuated for ages to come as the model of free governments and the asylum for the oppressed of every land.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Forney, its Secretary, announced that the Senate had passed a joint resolution of the House (No. 133) relative to the attempted assassination of the Emperor of Russia, with an amendment, in which he was directed to request the concurrence of the House.

RECONSTRUCTION—AGAIN.

Mr. GARFIELD. Mr. Speaker, I do not rise to speak at length upon the pending measure, but for the purpose of entering a motion and submitting a few practical suggestions on the bill, and particularly in reference to the third section.

With almost every proposition in the report of the joint committee on reconstruction I am pleased; yes, more than pleased, I am delighted that we have at least reached the firm earth, and planted our feet upon the solid granite, on enduring and indubitable principle. I believe we have at last a series of propositions which, in the main, will meet the approval of the American people as no others have ever done since the beginning of this struggle.

I will not go into a general discussion of the reconstruction policy, but will confine myself in the few words I shall say to the joint resolution and the amendment to the Constitution proposed by it now before the House, and more particularly to one section of it. First let me say I regret more than I shall be able to tell this House that we have not found the situation of affairs in this country such, and the public virtue such that we might come out on the plain, unanswerable proposition that every adult intelligent citizen of the United States, unconvicted of crime, shall enjoy the right of suffrage.

Sir, I believe that the right to vote, if it be not indeed one of the natural rights of all men, is so necessary to the protection of their natural rights as to be indispensable, and therefore equal to natural rights. I believe that the olden sentence of John Stuart Mill, in one of his greatest works, ought to be written on the constitution of every State, and on the Constitution of the United States, as the greatest and most precious of truths, "That the ballot is put into the hands of men, not so much to enable them to govern others as that he may not be misgoverned by others." I believe that suffrage is the shield, the sword, the spear, and all the panoply that best befits a man for his own defense in the great social organism to which he belongs. And I profoundly regret that we have not been enabled to write it and engrave it upon our institutions, and imbed it in the imperishable bulwarks of the Constitution as a part of the fundamental law of the land.

But I am willing, as I said once before in this presence, when I cannot get all I wish to take what I can get. And therefore I am willing to accept the propositions that the committee have laid before us, though I desire one amendment which I will mention presently.

I am glad to see this first section here which proposes to hold over every American citizen, without regard to color, the protecting shield of law. The gentleman who has just taken his seat [Mr. FINCK] undertakes to show that because we propose to vote for this section we therefore acknowledge that the civil rights bill was unconstitutional. He was anticipated in that objection by the gentleman from Pennsylvania, [Mr. STEVENS.] The civil rights bill is now a part of the law of the land. But every gentleman knows it will cease to be a part of the law

whenever the sad moment arrives when that gentleman's party comes into power. It is precisely for that reason that we propose to lift that great and good law above the reach of political strife, beyond the reach of the plots and machinations of any party, and fix it in the serene sky, in the eternal firmament of the Constitution, where no storm of passion can shake it and no cloud can obscure it. For this reason, and not because I believe the civil rights bill unconstitutional, I am glad to see that first section here.

As the nearest approach to justice which we are likely to be able to make, I approve of the second section that bases representation upon voters. I believe the section is now free from the objections that killed it in the Senate, and I have no doubt it will now pass that body.

I am glad to see the fourth section here, which forever forbids the payment of the rebel debt. I am quite sure that on the proposition no man in this House will vote in the negative. Some may think the section unnecessary, but for abundant caution, and "to make assurance doubly sure," let it become a part of the Constitution.

It is to the third section that I wish to call the attention of the House for a moment. The gentleman from Maine [Mr. BLAINE] has made a point against it, which has at least this value; that whatever may be the intention of the committee or of the House, the section is least susceptible of double construction. Some may say that it revokes and nullifies in part the pardons that have already been granted in accordance with law and the proclamations of the President. Others may say that it does not affect them, and will not apply to rebels who have been thus pardoned.

Mr. STEVENS. Will the gentleman allow me to interrupt him a moment?

Mr. GARFIELD. Certainly.

Mr. STEVENS. I was not perhaps sufficiently explicit in what I said in answer to the interrogatory of the gentleman from Maine, [Mr. BLAINE.] I admit that a pardon removes all liability to punishment for a crime committed. But there is a vast difference between punishing for a crime and withholding a privilege. Nobody will doubt that you may distinguish between classes in the privileges accorded to them if you think their enjoyment would be dangerous to the community. While I admit that the pardon will be full and operative so far as the crime is concerned, it confers no other advantages than an exemption from punishment for the crime itself.

Mr. GARFIELD. I was about to say that if the section does not apply to those who have been pardoned, then it will apply to so small a number of people as to make it of no practical value; for the excepted classes in the general system of pardons form a very small fraction of the rebels. If the section does apply to those who have received the pardon, the objection of the gentleman from Maine [Mr. BLAINE] may be worthy of consideration.

But, without entering into the question of construction at all, and if there were no doubt or difference on that score, there are still other points to which I wish to call the attention of the House. If the proposition had been that those who had been in rebellion should be ineligible to any office under the Government of the United States, and should be ineligible to appointment as electors of the President and Vice President of the United States, or if all who had voluntarily borne arms against the United States had been declared forever incapable of voting for a United States officer, it would, in my judgment, be far more defensible. But what is the proposition? It is that—

Until the 4th day of July, in the year 1870, all persons who voluntarily adhered to the late insurrection, giving it aid and comfort, shall be excluded from the right to vote for Representatives in Congress and for electors for President and Vice President of the United States.

Now, Mr. Speaker, this, in my judgment, is the only proposition in this resolution that is not bottomed clearly and plainly upon principle—principle that will stand the test of centuries, and be as true a thousand years hence as it is to-day. If the persons referred to are not worthy to be allowed to vote in January of 1870, will they be worthy in July of that year? If the franchise were withheld until they should perform some specific act of loyalty, if it were conditioned upon any act of theirs, it would commend itself as a principle, but the fixing of an ordinary date, without any regard to the character or conduct of the parties themselves, is indefensible, and will not commend itself to the judgment of reflecting men. What is worse, it will be said everywhere that this is purely a piece of political management in reference to a presidential election.

Now, I desire that what goes into our Constitution shall be the pure gold, unalloyed, untainted, having mingled with it nothing that will not stand the test of the ages. I fear that the proposition to which I have just referred might not stand that crucial test.

But, sir, I invite the attention of the House to another consideration. Suppose this section should become a part of the Constitution, and suppose that it were entirely defensible as a matter of principle, I ask gentlemen how it is to be carried out in practice. If, under its operation in eleven States of the Union, nine tenths, and, in some

instances, ninety-nine hundredths of the adult population are to be disfranchised for four years, how do you propose to carry its provisions into practical execution? Will nine tenths of the population consent to stay at home and let one tenth do the voting? Will not every ballot-box be the scene of strife and bloodshed? It may well be doubted whether this section can be carried out except by having a military force at every ballot-box in eleven States of the Union. Are you ready to make the South a vast camp for four years more? I am ready to do that or anything else in the way of expense, if it is necessary as means of securing liberty and union: but I believe that great result can be achieved in a less expensive way. But it is evident to me that if this section becomes a part of the Constitution, it must either remain a dead letter or we must maintain a large army to enforce it. I do not, therefore, think it wise or prudent, both for practical reasons and for reasons of construction, as suggested by the gentleman from Maine, that the third section shall stand as a part of the Constitution in its present form.

I am sure no member of this House will think that I make this motion with the least desire to favor or excuse in any way the men who have been in arms against the Government. I trust I do not need to make such a disclaimer to any person here, or among Union men anywhere. But I desire that any proposition which may be submitted by us for ratification by the States shall be so grounded in practical wisdom, that when it is presented to the American people, any man who votes against it will need to hide his face in shame. And there are thousands of men who only need some little excuse to justify themselves in voting against this great and good measure. I had nearly completed a substitute for this section providing that no person who had voluntarily adhered to the late insurrection should ever be eligible to any office under the United States, but as I have not perfected it I will not present it now. I hope, however, we may begin by striking out the section as it now stands.

Is it now in order, Mr. Speaker, to move an amendment?

The SPEAKER. A motion to amend is not in order pending a motion to recommit.

Mr. GARFIELD. Then I move that the resolution be recommitted to the committee, with instructions to report it back to the House with the third section stricken out.

Mr. RAYMOND. I inquire whether it will not be in order to call for a division on the different sections of this amendment. I think that will be the better way to test the sense of the House.

Mr. GARFIELD. Mr. Speaker, I think when the vote comes to be taken on the motion to recommit, with instructions to strike out, the merits of the question will be tested by the House.

Mr. RAYMOND. I ask whether it will be in order to call for a division now, or at any time.

The SPEAKER. A resolution can be divided if each part can stand by itself, but a bill or joint resolution cannot be divided. It may be amended. Sometimes the House considers them section by section. They stand as a whole, and must be so considered.

Mr. RAYMOND. Can this be considered section by section?

The SPEAKER. It has been reported as a whole and must be acted on as a whole.

Mr. RAYMOND. If this be considered section by section, then a two-thirds vote will be required to carry each section. If amendment is necessary a majority can make it.

The SPEAKER. A majority can amend it, but it will require two thirds to pass it.

Mr. ELDRIDGE. I rise to make an inquiry. This being an amendment to the Constitution in three different particulars. I ask whether it will not be required that we shall vote on them separately. I ask whether we can amend the Constitution by adding provisions grouped together in the manner in which these are without voting on each distinct proposition. Do not the Constitution and law require that they should be so voted on?

The SPEAKER. They do not. The proposition is reported by the committee as a whole, and although it embrace different provisions, yet this House and the Senate and the people will vote on it as a whole.

Mr. GARFIELD. It appears, then, that my motion is the only one that will bring us to a vote on this subject.

The SPEAKER. The gentleman from Pennsylvania [Mr. STEVENS] has the right to withdraw his motion to recommit, and with the withdrawal of that motion the instructions would fall.

Mr. GARFIELD. Would I not have the right to renew the motion?

The SPEAKER. The gentleman could renew his instructions if the previous question were not sustained.

Mr. GARFIELD. Would I not have the right to move to amend if the previous question were voted down?

The SPEAKER. It would then be in order.

Mr. GARFIELD. Now, Mr. Speaker, if the gentlemen who report this bill will put in a section, that all who participated in the rebellion shall forever be excluded from the right of elective franchise, in all cases relating to national offices, then I will say the proposition will be just and one we could stand upon as a matter of principle. Anything is just which excludes from privilege and power all those infamous men who participated in rebellion. The proposition, without any modification, without any limitation, would meet with my approval as one

eminently just, if it could be practically carried out. But when you attempt to make it extend only for a limited period, you thereby acknowledge that as a principle they ought not to be excluded except for a limited period. I am unwilling to admit that proposition. As a matter of principle they should either be forever excluded, or allowed to come in when they comply with such conditions as the loyal people of this country, through their representatives in Congress may prescribe. I do not think we can so well stand a mixed proposition like this.

Mr. DAWES. The gentleman proposes to submit practical views on this question, and in that view I ask him by what method the Congress of the United States could carry out that proposition if it is to deprive these parties of the right to vote in State affairs without erecting themselves into a tribunal in which to settle the question itself. I ask in that connection what tribunal is erected either in the Constitution or laws of the United States by which to settle the question in the appointment of electors of President and Vice President?

Is there any tribunal provided either in the Constitution or the laws of the United States to test the question, should the time ever come when the elections of a President and Vice President depends upon the right of certain men to vote as electors or members of the Electoral College, and yet their right so to vote be disputed?

It seems to me there is a defect somewhere in the want of any tribunal known to the Constitution and laws by which you can ever determine this question, and the time may

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come when the whole nation will be rent in twain upon that question.

Mr. GARFIELD. I am obliged to the gentleman from Massachusetts. I had noted that point, and in this running debate was about to overlook it, that in case this provision should prevail and there should come up at the next presidential election a number of electors from those eleven States whose vote would determine the fate of the election, and then in the Electoral College the question should be raised whether those electors were chosen by men who had been in rebellion, what tribunal have we to decide that question? Have we any committee of elections provided for in the Electoral College? Have we any court, have we any tribunal whatever under the Constitution to which that important question could be referred?

It is not impossible that this section might bring us face to face with a new and most dangerous question, the solution of which is not easy to see.

Mr. SCOFIELD. Will the gentleman yield for a question?

Mr. GARFIELD. Yes, sir.

Mr. SCOFIELD. The gentleman says that he will go for an amendment to the Constitution that shall disfranchise this class forever. Now, I wish to ask him, if he should get the report amended to suit him in that respect, how is he going to get a tribunal to decide that question any better than now?

Mr. GARFIELD. The gentleman's question does not involve me in any difficulty. I did not say I was in favor of putting such a clause into this amendment in view of all the circumstances, but I said that that proposition would be more just than the present one, and I would prefer it. There would be practical difficulties in the way of either proposition, but more I think in the way of this.

Mr. HOTCHHISS. Will the gentleman yield?

Mr. GARFIELD. Excuse me; I shall conclude my remarks in a few moments. My colleague [Mr. Finck] denounces this proposition and the whole scheme of the reconstruction committee as revolutionary, and calls upon the South to rally unitedly, and trusts they will have the manliness to resist it. It is not the first time that gentlemen on that side of the House have asked the South to rally against the North. During the last five years of bloody war their voices and their votes here and their actions elsewhere have been characterized by the same spirit, and have helped to unite and rally the South against the Union. It does not become these men who have so long pursued these revolutionary schemes against liberty to charge this House with being revolutionary when it is struggling to restore both liberty and Union to the Republic.

Mr. FINCK. Does the gentleman refer to what I said a few moments ago?

Mr. GARFIELD. I do.

Mr. FINCH. The gentleman has misstated what I said. I called upon the South to rally around the policy of Andrew Johnson; nothing about rebellion.

Mr. GARFIELD. Well, Mr. Speaker, how much difference there is between the gentleman's sentiment as I repeated it and as he himself states it I leave it to the House to judge. I understood him to call upon the people of the South to have the manliness to resist the operations of Congress and of the great Union party.

Mr. FINCK. I did not use the word "resist."

Mr. GARFIELD. The gentleman can consult his notes. If he did not use the word he knows best, and I desire

to be corrected if I misrepresent him. But I understood him to say that he trusted there was sufficient manhood in the people of the South to unite and resist the revolutionary schemes of this Congress, as he was pleased to denominate them.

Mr. FINCH. One word. I said I hoped they would have the firmness and manliness of spirit to unite and reject this proposed amendment, which was calculated to subordinate them as States in the Union.

Mr. GARFIELD. They have undertaken to reject and resist our scheme of restoring the Union for five years, and they propose now, and the gentleman by his own confession invites them to continue to unite and reject the scheme of the great Union party and of the people to build up liberty in this country and put down traitors and treason everywhere. I call upon the great Union party to stand together, and with all their manhood resist the revolutionary schemes not only of these rebels at the South, but of their coadjutors and abettors on this floor and everywhere who would unite with them and trample not only upon the prostrate body of the Union party, but, as I believe, of liberty herself. I have done.

Mr. THAYER obtained the floor.

Mr. FINCH. Will the gentleman allow me just one moment?

Mr. THAYER. I will yield to the gentleman for a moment.

Mr. FINCH. I desire to say to my colleague, for whom I have the highest respect, that in my judgment there is but one party to this country that is a disunion party, and he belongs to it. [Laughter on the Republican side of the House.]

Mr. GARFIELD. I am willing to stand by my record as a Union man.

Mr. THAYER. Mr. Speaker, the proceedings of the House to-day will, I trust, silence, at once and forever, the clamorous calumnies which have been industriously propagated by designing persons ever since this Congress convened, in which it was asserted that this Congress had no intention of taking any steps the object of which was the restoration of peace and concord to this whole country.

There have been persons, sir, very wise in their own conceit, great builders of States in their own judgment, and great law-makers, if their own opinions are to be received as truth, who have supposed that the great work upon which this Congress has entered was a work which might be accomplished with as much facility as a justice of the peace would dispose of an insignificant case in his court; and who saw, in the subject which engages the attention of this House, a matter of no grander dimensions than those which characterize the ordinary legislation of Congress. In the opinion of these persons the accumulated ruin of four years of civil war was to be remedied in an hour; States which were disorganized and rent from the parent Government by organized secession; by the deliberate and solemn act of conventions of the people; by the passage of laws during a period of four years; by the formation of new local governments; and by the exercise of every *de facto* sovereign power, were, in the opinion of these wiseacres, to be regenerated and restored to their normal relations to the Government, whose laws they had overthrown and trampled under foot, with as much facility as you would pass the most unimportant bill and with as little delay as it would require to call the yeas and nays in this House.

Let the American people, Mr. Speaker, understand, as I doubt not they do generally understand, the magnitude of the ruin which has been caused by the rebellion, and they will comprehend the labors and the difficulties which attend the reconstruction of those old relations of loyalty and fidelity to the Constitution which one characterized these States.

Sir, for one, I have never lost my faith in the wisdom and discretion of the able committee to whom, at the outset of this Congress, this most important subject was committed. For one, I have not doubted that as soon as it could be accomplished, within as short a compass of time as the nature of the subject and the extent of the labors devolved upon them would permit, they would present to this House some scheme upon which the loyal people of the country might unite to effect a perfect restoration of peace and harmony throughout the United States. To the scheme which they have presented for that purpose, with the exception of one feature contained in it, and upon which I will presently remark, I am prepared, after due deliberation, to give my cordial assent and approval. The exception to which I refer is the provision of the third section of the proposed amendment to the Constitution.

With regard to the first section of the proposed amendment to the Constitution, I cannot conceive that any loyal man can hold any other view upon that subject than that which is indicated in the proposed amendment. The Constitution of the United States apportioned Representatives and direct taxes among the several States according to their respective numbers, and ordained that those numbers should be determined by adding to the whole number of free persons, including those held to service for a term of years and Indians not taxed, three fifths of all other persons. So stood the Constitution at the commencement of the rebellion. By that instrument three fifths of the class of persons known as slaves were counted in the enumeration which fixed the basis of representation in

this House.

How stands the Constitution now? Why, sir, the literal application of the Constitution to the present state of affairs makes this late slave population of the rebel States count in the representation in this body, not as three fifths, but as five fifths. Will any man say that that was contemplated by the framers of the Constitution? Will any man say that it was within the intention of the framers of that instrument that the late slaves in this country should, by an unforeseen state of public affairs, under a provision which enacted that they should count in the basis of representation as three fifths, come to count as five fifths, while at home they are counted politically as nothing? Yet this is what is proposed by those who oppose this amendment. It seems to me no man can maintain that proposition upon any principle of justice or sound political reasoning. What number of Representatives will this bring into this Chamber from the rebel States by way of increase over the former number that came here under the terms of the Constitution? About thirteen members. Is it not preposterous that after all the trials, the sacrifices, the sufferings, and the hardships caused by this great war for the Union the result of the success of the Government should be the increase of representation in this House on the part of those who made the rebellion, by adding thirteen members which they had not before the war? Is there a man here who dare go before the northern people and tell them that they are to be rewarded for the losses and sufferings which they have sustained by having thirteen additional members admitted into this body from the rebel States. I want to see the northern constituency that will send a Representative here who declares in plain terms that that is just and that he is in favor of it.

Now, I ask gentlemen on the other side of the House why that should be done. If you say that this large class of persons have been transformed from their late condition of chattels to a condition in which they constitute a part of the element of the political fabric, then I can conceive that having added that much in population to the thinking, voting men of the southern States, it would be just and proper that that addition should be represented in this body. But we all know that such is not the case. In those States themselves the late slaves do not enter into the basis of local representation. In South Carolina they do not enter into the basis of representation in the Legislature of that State. And anybody who will read the new constitution of South Carolina will see that such is the case.

Would it not be a most unprecedented thing that when this population are not permitted where they reside to enter into the basis of representation in their own State, we should receive it as an element of representation here; that when they will not count them in apportioning their own legislative districts, we are to count them as five fifths (no longer as three fifths, for that is out of the question) as soon as

you make a new apportionment? I am not going to dwell upon that proposition. I believe it to be a proposition which the people of this country will understand without much discussion. You have only to enunciate that proposition in plain terms in order to secure for it the unqualified rebuke of every man who sustained the Government during the war for the Union.

With regard to the second section of the proposed amendment to the Constitution, it simply brings into the Constitution what is found in the bill of rights of every State of the Union. As I understand it, it is but incorporating in the Constitution of the United States the principle of the civil rights bill which has lately become a law, and that, not as the gentleman from Ohio [Mr. Finck] suggested, because in the estimation of this House that law cannot be sustained as constitutional, but in order, as was justly said by the gentleman from Ohio who last addressed the House, [Mr. Garfield,] that that provision so necessary for the equal administration of the law, so just in its operation, so necessary for the protection of the fundamental rights of citizenship, shall be forever incorporated in the Constitution of the United States. But, sir, that subject has already been fully discussed, I have upon another occasion expressed my views upon it, and I do not propose to detain the House with any further remarks of my own upon it.

I pass now to the third section of the proposed amendment, and here, sir, I am constrained to say that I do not believe it to be either proper or expedient to retain this section of the proposed amendment. I do not believe it for the reason which is contained in the preamble of one of the bills reported by the committee, the "bill to provide for the restoration to the States lately in insurrection of their full political rights." The preamble of that bill, as reported by the committee, reads as follows:

Whereas it is expedient that the States lately in insurrection should, at the earliest day consistent with the future peace and safety of the Union, be restored to full participation in all political rights.

I am opposed to the third section of the proposed amendment, because I am in favor of the preamble of the bill. I am opposed to it because it looks to me like offering to the people of the States lately in rebellion peace and restoration with one hand, while you snatch it from them with the other. I am opposed to it because I think it will

keep this country, which we seek to pacify and to bring back to its old state of allegiance, in a state of constant turmoil and disaffection if it does not rekindle afresh the fires of civil war.

Sir, I suppose the object of the present programme to be to indicate a plan which has for its object the immediate, not the prospective, restoration of the people of these States to the privileges they have lost. Immediate, if the safety of the country will permit. If the safety of the country will not, upon any conditions, admit of it, then, sir, we had better dismiss the whole subject. If the safety of the country will admit of it, then let us name those conditions.

That, sir, is what the committee, in my understanding, have attempted to do; but among the conditions which they have named is this one, which, in my judgment, is not necessary or expedient, and which appears to me to be impolitic and fraught with dangerous consequences. Sir, with what propriety, let me ask this House, can we present an offer to the people of the South to return to their allegiance, and to unite with us once more in the maintenance in good faith of the Constitution, if, while we propose as a condition the ratification of an amendment to the Constitution, and as another condition the ineligibility of the leaders of the rebellion to Federal office, we say to them at the same time that, although you comply with these conditions, although you agree to adopt this amendment, although you agree that representation shall be based upon the numbers which constitute a part of the body-politic, although you agree that some example shall be made of this great iniquity by excluding from Federal office those who were ringleaders in it, yet you shall not be restored to the right of representation or to any participation in public affairs until the year 1870?

Now, sir, I am opposed to that; I think that it imperils the whole measure under consideration; and when I say that, I do not speak so much of the fate of that measure in this House as I speak of its fate in the country at large. I do not believe that the people of the loyal States will subscribe to either the necessity or the expediency of the third section of the proposed amendment to the Constitution. I believe, sir, that the masses of the loyal people of this country, those who made the greatest sacrifices to save it, are in favor of the restoration of these political rights to the southern people just as soon as they can be restored with safety; and I think that they regard as the only security and only safety which you can exact or obtain, the reform of the principle of representation, or rather the proper adjustment of the Constitution as regards representation to the new state of things. That is the point to which the loyal millions of this country turn their eyes for future peace and security. They know that if, instead of reducing the representation of the southern States in this house to a standard of just equality with ourselves, you have the Constitution as it is to operate upon an unforeseen state of affairs, and give thirteen new Representatives to the lately disloyal States in this House upon a basis which they repudiate at home, there will be no peace and no security in the future for this Government. The inequality of representation worked by the result of the war in the emancipation of the slaves must be remedied. Representation must be based upon a population which is counted as a part of the body-politic and which forms an element of government. This must be done by an amendment of the Constitution, the original provisions of which are inapplicable to the altered condition of public affairs.

The loyal people who have preserved the Government demand this amendment to the Constitution. In my judgment, they will never, if they can prevent it, suffer this Government to be long without this amendment to the Constitution, because it would be a most unjust and cruel return for all the sacrifices which they have made, to deny them this measure of justice. But, sir, they do not, in my judgment, demand as a further price of security that the rehabilitation of the southern people, with all the rights of freemen, shall be postponed until 1870. I agree that it is just and expedient and proper that you should fasten a badge of shame upon this great crime of rebellion by rendering ineligible to office under the United States those who have been leaders in the insurrection against the Government. But, sir, this third section goes much further than this. It declares that the masses of the people in the lately insurrectionary States—because it is idle to talk of the people in connection with the infinitesimal number of Union men in those States—shall be disfranchised. We know that the masses of the people there, with exceptions too small to be counted, did support the rebellion, and supported it with their whole heart. They supported it in the field; they supported it by the payment of taxes; they supported it by speech and by votes; they supported it in every village and by every fireside. Everybody knows that. We cannot deny it. There is no use in attempting to conceal the fact. And in dealing with a great subject like this it is better to look facts in the face and treat them as facts. The third section of the proposed amendment disfranchises until 1870 this whole people, while the measure itself is presented to us as a measure of universal pacification as well as a measure for future security.

I do not believe, sir, that this feature of the measure which is proposed will meet the approval of our constituents. I believe that what the constituencies of the States now represented in Congress demand is, not prospective reconstruction, but immediate reconstruction with conditions that will secure the public safety. As I have already said, the great condition of public safety and security is the readjustment of the Constitution upon the

subject of representation, that article of the Constitution which relates to the subject of representation having been pushed by the war from the original sphere of its operation, and which will, without amendment, operate in a manner never contemplated by the framers of the Constitution and with a degree of injustice to which the loyal States cannot consent to submit, and to which they will not submit if it can be prevented.

What will continue to be the condition of the country if you adopt this feature of the proposed plan? Continual distraction, continued agitation, continued bickerings, continued opposition to the law, and it will be well fertile country if a new insurrection shall not spring from its bosom.

[Here the hammer fell.]

The SPEAKER. The gentleman's time has expired.

Mr. NIBLACK. I give notice that I will offer the following amendment if I shall have the opportunity:

Add to the fifth section as follows:

Provided, That nothing contained in this article shall be so construed as to authorize Congress to regulate or control the elective franchise within any State, or to abridge or restrict the power of any State to regulate or control the same within its own jurisdiction, except as in the third section hereof prescribed.

Mr. BOYER. Many great questions of public policy depend upon the decision of this Congress, but the greatest of them all is that which involves the restoration of the States to their practical relations with the Federal Union. Until that great end shall have been accomplished the triumph of the Government over the rebellion will be still incomplete; and the rebellion itself may claim at least a partial victory in so far as it has succeeded in removing the ancient landmarks of the Constitution, and in marring the symmetry of that constitutional Union of States which, as it came from the hands of our fathers, was the masterpiece of human government and the admiration of the world.

After the outbreak of civil war, the first essential work of the nation was the forcible suppression of the rebellion. That work, after a four years' struggle, the most sanguinary and costly in the history of revolutions, has been fully accomplished. Thanks to the unparalleled gallantry and endurance of our soldiers, and the unparalleled patriotism, energy, and generosity of the people, armed rebellion against the laws has been everywhere subdued, and from the Atlantic to the Pacific coast, and from the Aroostook to the Rio Grande, there is peace.

Exhausted by an unequal strife, conquered by overwhelming numbers, the late rebellious States lie prostrate at the feet of the Federal power, their population decimated and impoverished, their resources crippled and for the time well-nigh destroyed, and the cause for which they fought so madly and suffered so much hopelessly and forever lost. How shall the relations of national unity and harmony be restored between the States lately so discordant and belligerent? How shall the cruel wounds inflicted by the sections upon each other be healed? And above all, how shall the reunion be completed without the sacrifice of any of those principles and guarantees of civil liberty which we inherited, and without destroying the proportions of that political system of State and Federal jurisdiction which constituted the chief excellence of our Republic and has been the chief cause of its wonderful success? These are the important questions which devolve upon the present Congress of the United States. But however vast in its importance and comprehensive in its scope is the work which thus devolved upon Congress, it did not at first seem proportionately difficult. When Congress assembled in last December the lately rebellious States were already subdued and submissive, and all eager

to renew their allegiance to the Constitution and the laws. Their Senators and Representatives were here to take the constitutional oath of office, and in the name of their respective States to pledge their fealty to the Federal authority. In other ways they had manifested their good faith. They rescinded their ordinances of secession. They adopted the constitutional amendment abolishing slavery. To an ordinary observer not versed in the intricacies of party politics it must have appeared as if all the sacrifices of the war were about to be atoned by the blessings of a redeemed and reunited country. The temper of the southern people was most propitious. In answer to a resolution of the Senate, on the 18th of December, President Johnson said:

"In 'that portion of the Union lately in rebellion' the aspect of affairs is more promising than, in view of all the circumstances, could well have been expected. The people throughout the entire South evince a laudable desire to renew their allegiance to the Government, and to repair the devastations of war by a prompt and cheerful return to peaceful pursuits. An abiding faith is entertained that their actions will conform to their professions, and that, in acknowledging the supremacy of the Constitution and the laws of the United States, their loyalty will be unreservedly given to the Government, whose leniency they

cannot fail to appreciate, and whose fostering care will soon restore them to a condition of prosperity."
On the same day, and in response to the same resolution of the Senate, General Grant said:

"My observations lead me to the conclusion that the citizens of the southern States are anxious to return to self-government within the Union as soon as possible; that while reconstructing they want and require protection from the Government; that they are in earnest in wishing to do what they think is required by the Government, not humiliating to them as citizens, and that if such a course were pointed out they would pursue it in good faith."

And he added these other significant words, as if to administer a rebuke to the proscriptive body of men to whom his language was addressed:

"It is to be regretted that there cannot be a greater commingling at this time between the citizens of the two sections, and particularly of those intrusted with the law-making power."

Such was the condition of affairs at the commencement of the present Congress. All obstacles to immediate reunion seemed to have been happily removed. At the South no man opposed. But lo, in this hour of the nation's hope and expectation, the leaders of the great so-called Union party stood at the doors of the Capitol and barred the way. They demanded of the repentant and returning rebels new guarantees as the price of representation in Congress. "You represent dead States," said one; "Treason is a crime and must be punished," said another; "Give the ballot to the negroes," said all of them; "Disfranchise nine tenths of your white voters," said another; "You are too many," said the chief among the leaders, "you will vote with the Democrats, and they and you together, being a majority of the people, will at the very first election turn the Republicans out of office."

It shall now be my purpose, as briefly as I can, to analyze and expose the nature of the guarantees in the absence of which this Congress proposes to perpetuate disunion. I maintain that they are no guarantees for the safety of the Republic which are wanted, but guarantees for the safety of the Republican party. For this it is that the hopes of the nation have been falsified, and great national responsibilities and interests sacrificed and betrayed. For this it was, and not for the restoration of the Union, that the joint committee of fifteen on reconstruction was invented. Its author and mover has been fitly enough placed at its head. From that moment disappointment ceased, for hope had fled. No sane or intelligent man in the country from that hour ever looked to the committee of fifteen for anything else than an ingenious scheme to keep out the southern States, and to prevent the restoration of the Union until after the next presidential election. I do not mean to attribute to the chairman of the committee of fifteen the sole responsibility of the acts or omissions of either the committee itself or of the Congress which created it. On the contrary, I concede that he truly represents the principles and policy of the majority in this Congress, and that the leadership is his, not only by parliamentary usage, but by the natural right which pertains to experience, ability, and courage. Nothing is further from my intentions than to indulge in unbecoming personalities; but I must be allowed to say that the selection of such a leader is a fact which affords me a legitimate argument in favor of the position I take. For months before Congress met my colleague from the Lancaster district had been abroad through the land, breathing proscription, and confiscation, and forfeiture of State rights, and advocating suffrage for millions of negroes and disfranchisement for millions of white men. All this was well known to every member of this House; for my colleague is no obscure person, and he is not in the habit of hiding his light under a bushel. When, therefore, I find this statesman the "head center" of the Republican majority, his acknowledged leadership is conclusive evidence that his policy is the policy of his party. In the first speech made by him in the beginning of this Congress he candidly stated that the new guarantees demanded of the southern States were intended for party purposes. In advocating the change in the basis of representation as it is now substantially embodied in the proposed constitutional amendment, he said:

"With the basis unchanged, the eighty-three southern members, with the Democrats that will in the best of times be elected from the North will always give them a majority in Congress and in the Electoral College. They will at the very first election take possession of the white House and the Halls of Congress."

And again:

"If they should grant the right of suffrage to persons of color, I think there would always be Union white men enough in the South, aided by the blacks, to divide the representation, and thus continue the Republican ascendancy."

In none of the speeches which have been made upon this floor by other prominent leaders of the majority will be found any declaration of motive so outspoken as that of the chairman of the committee on reconstruction. But in all of them will be found a course of argument in harmony with the policy declared by him, and adverse to the immediate restoration of the Union. The Congressional Globe groans beneath the weight of innumerable columns

of labored argument to prove that eleven States are States no more, but subjugated provinces outside of the Union, and subject to the absolute will of the conqueror. To prove this disunion theory the various authors upon international law have been ransacked, and Grotius and Vattel have been misapplied and perverted with an amount of zeal and industry which might be entitled to commendation if employed to unite instead of to divide the country.

I do not propose to follow these learned doctors through the labyrinths which lead to the theoretical death and amputation of eleven members of the body-politic. For after all the refinements of logic and the subtleties of foreign lore have been exhausted they fail to answer the simple practical question. If, as admitted by all, secession was a failure and the war a success, how did the rebellious States get out of the Union? If they are States in the Union shall we appeal to Grotius and Vattel to define their rights, and the status of their people, and the extent of the Federal power over them? Or shall we rather go to the fountain head of our own political system, the Constitution of the United States, and to the writings of those who made it? What, indeed, if the States were dead, or as some with more refinement than others express it, in a state of suspended animation, what might we then expect from a body of patriotic statesmen assembled for the reconstruction of the Government? Which would be the purer and the nobler statesmanship, to trample upon the in-animate carcasses of the prostrate States with the iron heels of political proscription and sectional hate, or to breathe into their passive forms anew the breath of life, and start them again in the career of honor, prosperity, and equality?

In elaboration and earnest zeal the arguments of the majority for the exclusion of States from the Union are only equaled by the efforts of the same reasoners in favor of the disfranchisement of their people after they get in. This is proposed by the joint committee on reconstruction as a condition-precedent to their admission at all. The purpose of this wholesale disfranchisement of the white people of the South who have been engaged in the rebellion becomes more clearly evident when we consider the coordinate branch of the same scheme for acquiring control of the ballot-box by the enfranchisement of the blacks: Upon what a comprehensive basis of philanthropy these political artificers profess to build the theory of "no distinction of race or color!" To what a sublime pitch of eloquent declamation they swell this lofty theme of universal brotherhood. But everything has its limit; and so it seems has the humanity of the Republican majority of the Thirty-Ninth Congress and its legitimate representative, the reconstruction committee. As a set-off to these glowing dissertations in favor of the political rights of about four million American negroes, we have from the same source arguments equally elaborate and expressions of emotion equally as intense in favor of the right and justice of excluding from all political privileges about twice that many millions of white Americans.

Both those objects are sought to be accomplished by the proposed amendment to the Constitution reported by the committee, and now before the House for discussion. That amendment, together with the bills reported in connection with the same, is submitted to the House and the country as the best considered plan of reconstruction which the committee, after five months' incubation, have been able to produce for the consolation of a distracted nation. The plan is, at least in my opinion, most admirably adapted to its design, which was nothing more nor less than the solution of the problem of a "how not to do it." In this I think it may be fairly said, in justice to the committee, that they have fully met the public expectation.

The terms laid down by the committee as the conditions-precedent to the admission of representatives in Congress from the States lately in insurrection are of such a nature as to preclude any reasonable hope of their acceptance. The third section of the proposed constitutional amendment, which I propose first to consider, is itself sufficient to convince any reflecting man that the amendment is not intended for adoption, but only to operate by means of its expected non-adoption as an excuse for the exclusion of southern representatives for an indefinite period. It reads as follows:

Sec. 3. Until the 4th day of July, in the year 1870, all persons who voluntarily adhered to the late insurrection, giving it aid and comfort, shall be excluded from the right to vote for representatives in Congress and for electors for President and Vice President of the United States.

The effect of this amendment, if adopted, would be to disfranchise for a period of over four years nine tenths of the voting population of eleven States. Does any sane man believe such terms would be accepted? When in the history of nations did a free people voluntarily consent to such a degradation? It is a condition which could not be accepted with honor, and it is a condition, therefore, which is not fit to be proposed to any American community by an American Congress.

But it is said that we have the rightful power to impose such a condition. If we had, its exercise would still be most unwise. It needs no argument to demonstrate that in statesmanship magnanimity is a nobler quality, and withal a sounder policy, than tyranny; and that it is better for a Government to call forth blessings by its clemency

than to provoke the curses of a people by its oppression.

But I deny altogether the right of the Federal Government to disfranchise the majority of the citizens of any State on account of their past participation in the rebellion. They who have committed treason are amenable to the laws, even after they have returned to their allegiance. But you cannot make new laws and a new Constitution to meet their case. Treason is undoubtedly a crime and may be punished, but by no bill of attainder or *ex post facto* law such as is provided in the amendment before the House.

The ninth section of the first article of the Constitution declares

"No bill of attainder or ex post facto law shall be passed."

That single prohibition is in itself a complete answer to all that has been said in support of the doctrine of the reconstruction committee. If any further answer were needed, it would be found in the ninth and tenth articles of the same instrument:

"Art. 9. The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Art. 10. The powers not delegated to the United States are reserved to the States respectively, or to the people."

It will not do to say that the civil war has abrogated the constitutional rights of rebellious citizens, and that vengeance beyond the boundaries of what is written is to be justified to the Federal Government by right of conquest. Not only is such a doctrine opposed by the express prohibitions of the Constitution, but Congress and the whole nation stand pledged before the world against any such interpretation. After the civil war had commenced, and after a great battle had been fought. Congress passed through both Houses, by an almost unanimous vote, the following resolution:

"That this war is not prosecuted upon our part in any spirit of oppression, nor for any purpose of conquest or subjugation, nor purpose of overthrowing or interfering with the rights or established institutions of those States, but to defend and maintain the supremacy of the Constitution and all laws made in pursuance thereof, and to preserve the Union with all the dignity, equality, and rights of the several States unimpaired; that as soon as these objects are accomplished the war ought to cease."

Everywhere throughout the loyal sections of the country this was the accepted doctrine, and under it and for it the nation's treasure was poured out and the nation's blood was shed. It was our tower of strength, and clothed us in the indestructible panoply of right. Shall we now, when the war is over, be told that this was only a sham, a blind to delude the people and recruit the armies?

The gentleman from Ohio, [Mr. SHELLABARGER,] in his speech delivered upon this subject on the 21st of April, based his argument for the right to disfranchise the population of the late rebellious States upon the doctrine of self-preservation as the universal right and duty of nations. He argued this right upon an assumed state of facts with great force and learning; but the proof of the main premises of his proposition he altogether omitted. He assumed without proof that such disfranchisement is in this case necessary for the preservation of the nation; and that essential link being wanting, his entire elaborate argument falls to the ground.

If there does exist any necessity for the disfranchisement of the people of eleven States of this Union it must be because if suffered to vote for representatives and for President they would be numerically strong enough through the legitimate channels of legislation to control the Government of the country. But it is plain that of themselves they constitute a very perceptible minority of the entire nation. How, then, could they get control of the Government? It is plain that they never could acquire the sway in Congress or elect a President except with the help of a sufficient number of loyal voters in other sections of the country to constitute with themselves a majority of the whole people. In what attitude does this leave the party who upon this ground are striving to exclude southern representatives? Why, in the attitude of a conscious minority engaged in a conspiracy to keep the control of the Government against the will of a majority of the people of the whole country.

Will it be pretended that, counting in the population of all sections, those who seek to destroy the country are more numerous than those who desire to save it? If this be so, the country is already doomed, and there is no salvation for it. If, on the other hand, a majority of the whole people will stand by the country, it is not in the power of any sectional minority to destroy it, and the loyal majority can better and more safely govern the opposing minority, if there be such, inside of the Union than out of it. I know there are men on this floor who seek every opportunity to insult the common sense of the country by harangues attributing to the Democratic party at the North complicity with the rebellion. If this atrocious slander had in it any truth; if the great Democratic party

of the North, instead of sending its hundreds of thousands of volunteers into the ranks of the Federal armies, had gone over to the enemy or had remained only passive spectators of the scene, the victorious rebels would long ago have taken possession of the capital and the country. No one party can rightfully boast of having saved the country, and those who are the most bloody-minded and proscriptive in the uses of victory, as a general rule, have shed the least blood in its achievement.

I have considered the third section of the amendment reported by the committee, first, because it is the most objectionable of all the parts. I am opposed, however, to any further constitutional amendments as conditions to representation in Congress of any State in the Union. But my limited time will not allow me to dwell at much length upon the remaining sections.

The first section embodies the principles of the civil rights bill, and is intended to secure ultimately, and to some extent indirectly, the political equality of the negro race. It is objectionable also in its phraseology, being open to ambiguity and admitting of conflicting constructions.

The second section of the amendment is ostensibly intended to remedy a supposed inequality in the basis of representation. The real object is to reduce the number of southern representatives in Congress and in the Electoral College; and also to operate as a standing inducement to negro suffrage. It may indeed be said that there is some well-founded objection to the present basis of representation. But while eleven States remain without any representation in either House of Congress we may well postpone all minor reforms until the Constitution as it now is shall be first applied in good faith by those self-same Constitution menders. Justice and equality might also be promoted by carrying the reform into some other quarters. There can, for example, be no good reason founded in justice and equality why the six New England States, with a population of little over three millions, should have twelve votes in the Senate of the United States, and the State of New York, with a population of about four millions, only two. Would it not promote justice and equality to reconstruct in this respect New England's lucky six as well as Dixie's unlucky eleven?

The fourth section of the amendment prohibits the assumption of the rebel debt by the United States or any of them. But I imagine there is no hot haste required to prohibit by a constitutional enactment the payment of this debt by the bankrupt States of the South; and I do not suppose that any man outside of a lunatic asylum ever dreamed it would be paid by any one else. Besides, a constitutional amendment has already been passed this session by Congress to the same effect.

The fifth and last section of the amendment empowers Congress to enforce by appropriate legislation the provisions of the article.

Upon this latter it will not be necessary to remark.

The amendment is accompanied by a bill, the first section of which proposes to prescribe the conditions of the future admission of the States in these words:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever the above recited amendment shall have become part of the Constitution of the United States, and any State lately in insurrection shall have ratified the same, and shall have modified its constitution and laws in conformity therewith, the Senators and Representatives from such State, if found duly elected and qualified, may, after having taken the required oaths of office, be admitted into Congress as such.

It will be observed that even after any State lately in insurrection shall have complied with the condition, "and shall have ratified the amendment and modified its constitution in conformity therewith, the Senators and Representatives from such State, if duly elected and qualified, may," not *shall*, but "*may*," "after having taken the required oaths of office, be admitted into Congress as such."

The precious boon thus graciously tendered by the reconstruction committee as the reward of absolute submission to all its behests is after all but a chance of representation dependent upon the pleasure of that or some similar committee, and to be regulated, doubtless, by the political exigencies of the times. Perpetual exclusion, of course, is not contemplated by the committee, and representation is doubtless intended to be allowed at an early a day as is consistent with the safety of the Republican party; and the four years' disfranchisement provided by the third section is only intended to make the next presidential election entirely sure, and to secure a safe working majority in Congress to support the incoming Administration.

The imaginations of some gentlemen become strangely excited in the argument of this question of southern representation. There are those who declaim upon it as if it were proposed to bring into this House unrepentant rebels still breathing treason against the Government and plotting its overthrow while claiming to have a voice in its councils. There is no such proposition. If there were such a proposition I am sure it would have no advocates

upon this floor. If such representatives were sent from the South, the majority have the power to exclude them, or to expel them after they had obtained an entrance.

It is argued that those who have once rebelled against the Government deserve to be disfranchised; but you cannot disfranchise a majority of the voters of a State without the establishment of an oligarchy; and the Constitution as our fathers made it guaranties a republican form of government to every State.

Besides, it is not for them alone that the Union is to be restored, but for ourselves also, and our children. Every hour during which we govern the eleven States with their twelve million people as conquered provinces carries us farther away from the original landmarks of the Constitution and brings us nearer to centralization and military despotism.

Mr. KELLEY. Mr. Speaker, I know not that I am called specially to give utterance to my thoughts on this measure. The report of the committee does not meet my expectation, and one of its propositions is in conflict with some of my well-considered convictions. If, however, those with whom I am sent to cooperate in this House deem this measure wise and expedient, I will vote for it. I am prompted to speak because it will enable me to gratify gentlemen on the other side of the House, by allowing them to hear voices from one of the disfranchised States. They will, I know, be gratified to learn that they are not entirely voiceless or powerless on this floor.

One thing attracted my attention and doubtless that of others while listening to the speech of the gentleman from Ohio [Mr. Finck] and that of my eloquent colleague, [Mr. Boyer,] and that was that neither of them embodied in the text of his speech the text of the amendment they were discussing. I do not think this omission was accidental. I apprehend they would rather their constituents should read their denunciatory remarks than the language of the propositions under consideration.

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THE CONGRESSIONAL GLOBE

May 8,

They have not discussed any provision of the proposed amendment. I will not say they dare not discuss them clause by clause and denounce them as they have, but it would evince a high degree of political courage.

Let us look at these provisions so fearfully denounced by the gentlemen. Does my colleague think he could go safely through his district in Pennsylvania denouncing the proposition to embody in the Constitution of the United States a provision that—

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the united States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws?

There is not a man in Montgomery or Lehigh county that will not say those provisions ought to be in the Constitution if they are not already there.

Again, sir, dare he read to his constituents the language of the second section and reiterate his denunciations of it? It is as follows:

Sec. 2. Representatives shall be apportioned among the several States which may be included within this Union according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But whenever in any State the elective franchise shall be denied to any portion of its male citizens not less than twenty-one years of age, or in any way abridged, except for participation in rebellion or other crime, the basis of representation in such State shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens not less than twenty-one years of age.

Shall the pardoned rebels of the South include in the basis of representation four million people to whom they deny political rights, and to no one of whom is allowed a vote in the selection of a Representative? Can he tell the men of the boroughs of Norristown and Allentown that one red-handed rebel in South Carolina is of right and ought to be the equal of three of the best and most patriotic of them on the floor of Congress or in the college for the election of President and Vice President? He dare not do it. They would spurn him and the insulting proposition. The men who fought the rebels and crushed their confederacy would say, give us at least equal consideration and power with the traitors against whom we fought, and who caused the death of three hundred thousand of our patriotic brethren.

I come, sir, to the third section. To strike that out would, in my judgment, be to emasculate the amendment. It is as follows:

Sec. 3. Until the 4th day of July, 1870, all persons who voluntarily adhered to the late insurrection, giving it aid and comfort, shall be excluded from the right to vote for Representatives in Congress and for electors for President and Vice President of the United States.

Who ought to govern this country? The men who for more than four years sustained bloody war for its overthrow, or they whom my colleague designates as "that proscriptive body of men known as the great Union party" who maintained the Government against the most gigantic rebellion since that which Satan led? I quote my colleague's language, and I ask him whether he dare go before our fellow-citizens and argue that magnanimity requires us to hand the Government over immediately to the vanquished but unconverted rebels of the South.

He says, and so does the gentleman from Ohio, that those States are in the Union, and that their people cannot be disfranchised.

Mr. BOYER. Will the gentleman allow me to interrupt him?

Mr. KELLEY. Yes, sir, very briefly.

Mr. BOYER. I did not propose by anything I said to hand this Government over to the control of rebels. As I understand it the people of the South, once rebels, are rebels no longer; and I say that when they are ready to submit to the laws, as I believe they are, and send loyal men to represent them in this Hall, they have a right to be here and a right to be heard in the affairs of the Government.

Mr. KELLEY. I will not reply to the gentleman in my own language, but from the pen of one who was as faithful to the rebellion and the confederacy as he, but made greater sacrifices for them. For he was in North Carolina and stood by the confederacy until its last army was surrendered. I read from his letter of 3d instant.

Mr. BOYER. Do I understand my colleague to say that I was faithful to the rebellion?

Mr. KELLEY. I say this: that the Democratic party of the North fought for the rebellion where there was no personal danger as zealously as the Democratic party of the South did on the field of mortal danger.

Mr. BOYER. And I say that my colleague fights for disunion as zealously as ever armed traitors at the South fought for it during the rebellion.

Mr. KELLEY. Opinions differ—that is all. Nothing further need be said on that subject.

In this letter of May 3, my clear-headed and statesmanlike correspondent says:

"I have always held that it was absurd in us, after being reduced to submission by the Federal Government, to set up any claim of right to regulate the terms of settlement.

"To me it is simply ridiculous to assert that the States had both the right to secede, and, upon a failure to establish it, the right to return at pleasure. No conclusion is more logical to my mind than this, namely, that if the right of secession existed and was exercised, the States are now conquered territory; or that, if it did not exist, the people, after attempting and failing in a revolution, forfeited their most valuable political rights. And in either case the consequences are practically not very different. Whatever I may think of the wisdom of your plan of reconstruction, the right of the Government to make one, nobody but an insane man can deny. Like the vanquished everywhere, I think the people of the South will reap true glory now in fortitude alone."

That comes from as stout a champion of secession, rebellion, and war as there was on the floor of Congress during the war—one who gave four years and most of his property to sustain the cause.

I turn to another distinguished son of the same State.

Mr. ROGERS. I ask the gentleman to give the name of the author of that letter.

Mr. KELLEY. Sir, so bloody-minded are some of the baser sort of the reconstructed that I am not disposed to offer a victim or two upon the altar of the curiosity of the distinguished leader of the Democracy from New Jersey. [Laughter.]

This letter is a little older than the other. It is dated April 24:

"The course of events has not surprised me much, though it grieves me exceedingly. I saw, or thought I saw, that the best thing for the whole country, especially for the South, was entire harmony between the President and the party which elected him. That harmony has been broken, I fear, without hope of restoration. I cannot but think that the President has committed a great blunder, if not a great crime. I know verily that for two or three months after the surrender—until indeed his restoration policy was fully developed and considered here a fixed fact nolens volens—the southern mind was more like a blank sheet of paper than I have ever knew it, more free from prejudice, more disposed to broad national views, and more susceptible to impressions favorable to the North and northern Men and northern ideas. Upon that blank sheet of paper might have been written enduring characters of peace, union, and harmony between every section of the Republic. But the time was lost; when it will return, God only knows. I give it as my deliberate conviction that the prospect is darkening every day. Sectional pride, sectional hate, sectional ideas are as rampant here as they were before the war. Is it so at the North? I cannot believe it is so. But I am told that the determination is fixed to let no part of the fruits of the war pass away till all be fulfilled.

This is right. Nor do I believe that our people will come to their senses until they realize this fact beyond cavil or dispute. The notion is sedulously inculcated here that the Northwest is thoroughly with the President and against Congress."

Mr. Speaker, there is no doubt that such false notions are sedulously inculcated, and produce much evil.

And the absurd notions inculcated here by gentlemen who claim to be the peculiar friends of the South are misleading the poor, impulsive, passion-ruled people of that section, and prompting them to such deeds as were perpetrated last week at Memphis, encouraging them to resist all efforts at conciliation and social reconstruction, impelling them to drive northern men and capital from their respective neighborhoods, and by threats-and deeds of violence to retard the material development of their own section and the interlinking of ours with theirs by the ties of friendship, of commerce. Yes, it is by promulgating such groundless delusions and catering to their wounded pride that the hour of safe and perfect reconstruction is delayed. No consideration is more important than the animus of the masses of the southern people; and he is not their friend who blinds their judgment or fires their hatred against the overwhelming majority of the people of the North.

Yet what does the third section of the proposed amendment, which my colleague says the people of the South cannot accept without dishonor, provide? Why, that at the end of four little years all those who by the crime of treason or the act of secession have disfranchised themselves shall vote and the past shall be politically forgiven, if not forgotten. Will my colleague dare go to his people on the ground that this offer is inhuman? Will he ask them as he did us how, if secession was a failure and the war a success, the States got out of the Union or the people lost their political rights. My Carolina letter answers that. If secession was a right it was exercised, and they are conquered territory; and if it was not a right, the people embarked in rebellion and have lost all civil and political rights, and the consequences are practically the same.

Mr. BOYER. Where does my colleague find his authority for saying that they have lost all their civil and political rights ?

Mr. KELLEY. I referred to the letter from the gentleman's coworker in the southern wing of the Democratic party during the last four years, my correspondent from North Carolina.

Mr. BOYER. I ask better authority than that of a rebel, although he may pass current with my colleague.

Mr. KELLEY. The time was when such would have been a good deal better than Republican authority with the gentleman.

Mr. BOYER. It is just as good to-day as the authority of the gentleman.

Mr. KELLEY. No advantage will accrue from involving great national questions in personal wrangles. I quoted the authority, and will ram it down the gentleman's throat in the sixth district in the coming congressional campaign.

Mr. BOYER. You had better take care of your own congressional district, and I will take care of mine.

[Laughter.]

Mr. RANDALL, of Pennsylvania. I think so, too.

Mr. KELLEY. I am in the habit of taking care of my district, and mean to do it.

Mr. Speaker, this section which is denounced as so degrading to the people of the rebellions States simply proposes, as I have shown, to restore to them at the end of four years those rights which the sensible people of the South know they have lost, and which they despise Andrew Johnson for attempting to restore by unconstitutional means. He has committed, said one of them, in the letter from which I read an extract, a great blunder, if not a great crime; and that is the sentiment of the brave men who fought us in the South.

The next section which the gentleman opposes is this:

Sec. 4. Neither the United States nor any State shall assume or pay any debt or obligation already incurred, or which may hereafter be incurred, in aid of insurrection or of war against the United States, or any claim for compensation for loss of involuntary service or labor.

There is not a voter in Pennsylvania that does not approve that proposition. The men of our State do not mean that the people of the United States or future emigrants to the southern States shall be taxed to pay the rebel debts or for slaves set free by war; and I mean that they shall see what the provisions are that the gentlemen assail with broad generalities and laudations of our modern "Moses." By the way, I may as well remark that gentlemen are mistaken when they suppose that Governor Johnson, in his speech to the colored people of Nashville, referred to the Moses of sacred

shave." He should not be censured because the enthusiastic hope of the poor freedmen misinterpreted his allusion. But to resume. It will not do to avoid the terms of this amendment. Gentlemen will have to confront them face to face.

I shall, Mr. Speaker, vote for this amendment; not because I approve it. Could I have controlled the report of the committee of fifteen, it would have proposed to give the right of suffrage to every loyal man in the country. I do not believe, with my colleague, that our Government rests on the complexion of its people, or the color of their hair. I believe that a patriot is a better citizen than a traitor. He talks of a proposition to enfranchise millions of negroes and disfranchise millions of white men. He does not use the language which his constituents will use, which is, that the friends of impartial suffrage propose to disfranchise traitors and to enfranchise patriots. They propose to punish treason and reward loyalty; and I know the people of Pennsylvania well enough to know how they will respond to that proposition.

Mr. BOYER. I desire to ask my colleague what sort of a government he would call that in which nine tenths of the adult male population are not allowed to vote—whether that is the kind of republican government which he has been telling us the Constitution guaranties to every State?

Mr. KELLEY. Sir, if nine tenths of the people of a State commit felony, and are convicted of it, they are deprived of the right to vote; and armed and warring treason involves all crimes. While, therefore, bloody-handed traitors, though numbering nine tenths of the people, are disfranchised by law, let the loyal people carry on the republican government of the State.

Mr. BOYER. One more question.

Mr. KELLEY. No, sir; no further interruption. My colleague believes that in South Carolina four sevenths of the people, every soul of whom were loyal, should be disfranchised, and three sevenths, every soul of whom were disloyal, should govern the whole seven hundred thousand people of the State. That is not republicanism. That is not democratic republicanism. That is not the sort of republicanism to which the interests and destiny of this country can be safely confided.

Mr. BOYER. My colleague is very apt to interrupt other gentlemen; and I trust he will have the courtesy to permit me, in this connection, to ask him one other question; and that is, whether he would disfranchise nine tenths of the adult male population of a State because of their treason after they have repented of that treason, have become loyal citizens, and returned to their obedience to the Constitution and the laws? I ask him whether he would, for the sake of punishing them still further, establish oligarchies in these States, by excluding the great mass of their citizens from the ballot-box.

Mr. KELLEY. Sir, if Probst, who recently murdered eight members of one family in my city, repented ever so much, I should still say, enforce the law against him; if you find his mental and moral nature so low that you ought not to execute him, because you do not believe him to be responsible, keep him in the penitentiary for the residue of his life, but never turn him loose on society. Protect society against him, however penitent he may profess to be. He only killed eight persons—some of these rebels, for whose equal citizenship the gentleman contends, killed their hundreds, and all of them struck at the life of the nation. This measure does not propose to punish them; on the contrary, it is an act of amnesty, and proposes, after four years, to reinvest them with all their rights, which they do not possess at this time because of their crime.

The only other section of this much abused proposition is as follows:

Sec. 5. The Congress shall have power to enforce by appropriate legislation the provisions of this article.

So far as I am individually concerned, I object to the amendment as a whole, because it does not go far enough and propose to at once enfranchise every loyal man in the country. I wish to see its power asserted by the Government. I want to see traitors in heart or head, those who would hatch or effect treason, made to understand that the Constitution of the United States is the supreme law of the land; that treason is a crime which must be made odious; that traitors must be punished; and that it is the purpose of the governing people of the North, "that proscriptive body of men known as the great Union party," to maintain these propositions beyond "all cavil or dispute."

Mr. SMITH. Will the gentleman allow me to ask him a question?

Mr. KELLEY. A short one.

Mr. SMITH. I would ask the gentleman if he is in favor of disfranchising all the colored men who went into the rebel army.

Mr. KELLEY. I am in favor of disfranchising every traitor in the land, whether he be white or black. But I do not believe the gentleman from Kentucky [Mr. Smith] can find a black voluntary traitor. Millions of colored

people were property when the war begun; they were owned; they were dragged or driven like cattle to where their owners would have them go; and if that was to the battlefield, being there they defended their lives. They were not allowed to assume responsibility when they were owned. Therefore do not adduce the fact that the master dragged his bound, his horse, or his slave into the field as evidence against the poor chattel. Prove the treason, make it evident in any way that he was a volunteer in the cause of the rebellion, then punish him as though he had been General Robert E. Lee.

Mr. SMITH. I happened to have seen myself in the field colored men who were volunteers in the rebel service; who were captured with arms in their hands; and who confessed that they had gone into the rebel service of their own accord. I have seen in the city of Washington, since I have had the honor of being a member of Congress, black men whose whole sympathies were with the South, and I must say, in opposition to the gentleman from Pennsylvania, [Mr. KELLEY,] that I do not feel like hanging these men of dark complexion who have voluntarily gone into the rebel army as privates. I wish to forgive them. Yet these men, as black as the ace of spades, went into the rebel army of their own accord to fight against the Government and against you, and yet you would not hang one of them while you would hang the white men who volunteered as they did to go into the rebel army.

Mr. KELLEY. Do you think they ought to vote because they fought for the rebellion, as you would have these others? [Laughter.]

Mr. SMITH. Now the laugh comes from the other side. [Renewed laughter.] That is pretty good. Now, I do not object to letting the black rebel vote if he was a voter before the rebellion. But the State of Alabama from whence these men came—

Mr. KELLEY. The gentleman has got through his question, I suppose.

Mr. SMITH. A moment.

Mr. KELLEY. How much time have I left, Mr. Speaker?

The SPEAKER. The gentleman from Pennsylvania [Mr. KELLEY] has two minutes of his time left.

Mr. KELLEY. I want to say in those two minutes that all that the gentleman from Kentucky [Mr. Smith] says may be true. I have known colored men to come in all along our lines, bringing their arms, ammunition, and sometimes horses with them, saying they had pretended to volunteer in the rebel service, in order that they might get to the front and run over to the land of freedom. I have no doubt there were thousands of such cases, and I should, therefore, require more proof to convict a freedman, whose master was in the rebel service, of treason than I would to convict Lee or any of the volunteer soldiers of the rebel army who were freemen, the masters of their own bodies, the possessors, under God, of their own souls, as the poor negroes were not allowed to be.

Mr. SMITH. Now I will take the other half a minute. I wish to say to the gentleman from Pennsylvania, [Mr. KELLEY,] in support of his own position, that I have been myself—if I may be pardoned for using that expression at this time—the recipient of the kindest and strongest and most loyal admonitions of that dark-complexioned race of which the gentleman has just been speaking. I have known an instance in which my own regiment and myself, and, as I believed at the time, the interest of the "front" to which I was ordered, were protected and saved by a man born in slavery, a man as dark as Egyptian blackness itself.

Mr. KELLEY. I wish to ask the gentleman whether a white traitor is better entitled to vote for Congress and President than that dark-skinned patriot.

[Here the hammer fell.]

Mr. SCHENCK obtained the floor.

Mr. SMITH. Mr. Speaker, I would like to finish my speech.

The SPEAKER. Does the gentleman from Ohio [Mr. SCHENCK] yield to the gentleman from Kentucky, [Mr. SMITH?]

Mr. SCHENCK. For how long?

Mr. SMITH. I only want a minute.

Mr. SCHENCK. Very well.

Mr. SMITH. I wish to say to the gentleman from Pennsylvania and to the House and to the country, that because of the action of that black man to whom I have referred, I secured to him his freedom by transporting him, under the authority of the Government, beyond the section of country where men were held as slaves; and for this he gave me his thanks, which I appreciate. No man to-day is more willing and more determined to interest himself in giving to these people full and complete protection than I am. I yield nothing to the gentleman from Pennsylvania, [Mr. KELLEY,] I yield nothing to that class of men, in a readiness to acknowledge and reward the services of men, black as well as white, who have been faithful to this Government.

Mr. SCHENCK. I believe I must resume the floor. The gentleman asked me for one minute and I have given him two.

Mr. Speaker, I have no prepared speech upon this very grave subject which we have now under discussion; and it is very possible that I shall not occupy nearly the whole of the thirty minutes allowed me by the rule which has been adopted. Still, I desire that whatever I may say upon the single point to which I propose to confine myself may be said without interruption; and I hope gentlemen will take this as a notice to permit me to proceed in my own way to develop whatever idea I may have, if I have a clear one upon the subject at all.

I shall not speak of this proposed constitutional amendment at large. I should not have spoken with reference to it at all, at least at this time, but for the point which has been made in reference to a single one of its provisions. Objection is specially made to the third section, as it stands in the report of the committee. That section, as proposed to be incorporated into the organic law of the United States, is in these words:

Until the 4th day of July, in the year 1870, all persons who voluntarily adhered to the late insurrection, giving it aid and comfort, shall be excluded from the right to vote for Representatives in Congress and for electors for President and Vice President of the United States.

I do not say, Mr. Speaker, that this section, any more than other sections of the amendment, is embodied precisely in the language which I would have used, or indicates precisely the change in the Constitution which I would have preferred, had the choice rested solely with me. But I am bound, like all other gentlemen, to submit may peculiar opinions in reference to this amendment, and every point and

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proposition which it contains, to what may seem to be the common sense of this House and of Congress, so that we may together arrive at what may seem to be nearest right, and yet capable of being agreed upon by all of us, or by a proper majority. I shall therefore raise now no question of criticism, nor insist upon the language which I would have used, or the form which I would have preferred in presenting a similar or equivalent proposition.

The objection which has been made by the gentleman from Maine [Mr. BLAINE] to that particular feature of this amendment, is, as I understand him, this, that it seems to conflict with previous legislation of Congress which authorized the President to grant pardon or amnesty to those who had been engaged in the insurrection, and that now, after pardon or amnesty, proclaimed either to individuals or classes, it seems an act of bad faith to punish further and again by denying the right of the elective franchise to any of these men who have been aiding and abetting the rebellion. I state the objection, I think, in the broadest and fullest extent to which it seems to go, and with all the force with which it seems to have struck the mind of my friend from Maine, [Mr. BLAINE.] At first it does seem to be a startling proposition. On the surface it would appear as if there was some bad faith in granting amnesty, in pardoning, and yet, as it were, still pursuing these insurgents and depriving them of certain privileges as additional punishment. If I understood this to be punishment, if I understood it to be a penalty imposed on them, depriving them of rights which they now enjoy, I would agree to the proposition made by the gentleman from Maine, and say that there is an inconsistency between the former action of Congress and the executive clemency exercised in carrying out the authority given by Congress, and that which is now proposed in the shape of amendment to your Constitution.

But, sir, I do not regard it in that light, and it is for the purpose of showing wherein it struck me differently that I propose for a few minutes to occupy the attention of the House.

Sir, the people of this country and those controlling the interests of the country now in official capacity are struggling between two ideas, more or less clearly defined on either side, and influencing the action of those who espouse them. There is, on one hand, what is called the President's theory for reconstruction of the States, and on the other what may be termed the congressional theory. As I understand the idea of the President of the United States, although his "policy" and his practice I must say on this very subject have been by no means consistent—it is this, that the States which have been in rebellion are now as much as any States of this Union, in full, complete, and equal relation to all the other States; that their rights are in all respects the same; that among these rights is included the privilege of unquestioned representation here in the councils of the nation, and that to shut them out from the enjoyment of this is to do them, therefore, absolute wrong.

Now, sir, I will not stop to inquire when that right attached. I will not stop to inquire whether the argument which would prove that proposition would not equally well prove that all through the rebellion, inasmuch as secession was a void act, these States and their people were fully and completely possessed of all rights in the Union, and therefore entitled to representation as now. I do not see where the argument is to stop. If the proposition be true, then at any time during the progress of the rebellion Virginia might have elected Robert E.

Lee a Senator to represent that State and her sovereignty at the other end of the Capitol, or any of those men who were serving under him as chiefs of division and brigade to represent districts here upon this floor; and to have excluded them would have been to take away the right of Virginia and of the people of Virginia to be represented in either branch of Congress. And Robert E. Lee and other such arch-traitors could have appeared here on the floor of Congress and spent their winter in obstructing legislation intended for the purpose of aiding the executive and war-making power in putting down the rebellion, and whenever the spring opened and they were ready for another campaign, might have taken the field in order by force of arms to attempt the destruction of the Government for which they legislated! Monstrous absurdity!

I will not stop, however, to ask when the time came, at what date the States were entirely and thoroughly and completely restored to that equal relation, because I do not believe they had any such equal, complete, normal relation as they once enjoyed while they were States in full communion with the rest of the Union. If I believed it, if I admitted that theory as to the present condition of the States, then it would follow with me necessarily that I should regard these people as having the right to vote for electors of President and Vice President and for members of Congress, and if they possessed this right, then to take away from them, either by statute law or organic law, the due exercise of it, would be imposing on them a penalty and punishment in addition to anything else they may have before been deprived of.

Rejecting this presidential theory, as it may be termed, I come then to the congressional theory on this subject. I will not stop to go into the inquiry whether these States have ever been out of the Union or not.

I do not believe they ever have. I do not subscribe to the doctrine of their having been reduced to the condition of Territories in the sense in which many understand it. I believe we had the right to subdue them, and subject them to obedience precisely upon the same principle on which a father punishes his own child when he has misbehaved. He thrashes his wicked and graceless son because he is his son, and not the child of a stranger. I believe we have a like right to inflict punishment on these rebellious States. In the domestic circle we shut the erring child up in a dark closet, or put him pouting in a corner, and keep him in disgrace away from the table, surrounded by the rest of the inmates of the family, until he has completely, and to our satisfaction, shown by penitence and a manifestation of a proper disposition that he means to deport himself better in the future; and no such sinning child has a right to complain of the discipline which keeps him in a place where he has by bad conduct put himself until he returns to good behavior.

But to the congressional theory. I understand it to be this: that these rebellious States have of themselves, as far as they have the power to do so, broken away from their normal and proper relations to the rest of the States; that when they thus broke away, though they did not release themselves from their obligations, they forfeited certain rights, and among others, after refusing to be represented here, disclaiming their allegiance and denying their connection through representation with the rest of the States, they forfeited that right of representation and cannot regain it until it is properly and by law restored.

And I understand, further, the theory to be that they can be properly restored only by law, and that until a law is enacted by which any State that has that flung itself out of its proper relations to the Union is permitted to come back and stand upon a footing with other States and enjoy its representation here, such right of representation cannot be regained by that State.

Now, if this be the true theory, as I think it is, then I have no difficulty on account of the objection made by the gentleman from Maine, [Mr. BLAINE,] because if those States have flung away their right of representation, if they have forfeited by their misbehavior their right to claim their old, normal, formerly existing relation to the rest of the States, it is to be a work of subsequent enactment when and upon what conditions such rights and relations shall be restored to them.

Fully believing this, I aver that there is nothing that should be regarded as penalty or punishment in this third section of the proposed amendment. It takes nothing away from the people of those States. It does not disfranchise, but refuses to enfranchise. If you say that the people of these States, because of their having been engaged in the rebellion, shall not vote for Federal officers, there is nothing taken from them, because they have already divested themselves of that privilege, voluntarily abandoned, given it up, flung it away by breaking loose from the rest of the Union, as far as by their act, disposition, and power they could do so.

These States, then, are not in the condition in which Ohio and Pennsylvania are. If we should pass a statute, or undertake to amend our Constitution so as to make a discrimination between the States of Ohio and Pennsylvania and the other States of the Union, saying that certain persons in those loyal States shall not enjoy and exercise the elective franchise, either through entire time hereafter or through a probationary term, a limited period, we do a wrong to those States; because Ohio and Pennsylvania and the citizens of those States have not already

disfranchised themselves and wickedly and madly thrust their privileges and rights away.

But the rebel States are in an entirely different condition. They have divested themselves, by breaking up the normal relations existing between them and the other States, of the privilege, and their people at this time have no right to vote for President or members of Congress; and if they can only be restored as States, as reorganized communities, as a people, by our action, to the enjoyment of those rights, then the very fact that we have the power by statute-law or amendment to the Constitution thus to restore them, involves the further proposition that their restoration must be upon such conditions and such terms as we shall prescribe.

I might liken this to the institution of property. I cannot, by statute-law or by any alteration of the organic law of the land, divest a man of property which he actually owns without doing him a wrong. If he has violated law and subjected himself to punishment, what he has may be reached by fine or confiscation.

But suppose him to have no property, and the case is very different. When we are making laws, giving the original authority upon which property is to be obtained and held, surely it may be stipulated that such and such terms are to be complied with or such and such duties performed as the conditions on which the privilege of acquiring that property shall exist.

I would not take away from any one the elective franchise which he now enjoys. If I did, then would I be acting in bad faith, as the gentleman from Maine apprehends. I simply say to rebels, your pardon or amnesty only related to the crime you had committed, and so far as that crime tainted your character or affected your future you are purged of it by that pardon or amnesty. But as to anything which you have already divested yourself of; which you do not now own or enjoy, and which you wish hereafter to acquire; or, having had it once and lost it, desire to have restored to you, I will impose such conditions by statute or organic law as will determine on what principles, in what way, and at what time you shall get it back.

But, sir, somewhat to my surprise, because, as I suppose, it does not appear to him as it does to me, but a consistent part of the course of legislation in which we are endeavoring here to engage, my honored colleague [Mr. GARFIELD] proposes to get rid of this entire section, and to instruct the committee, in case the amendment, be recommitted, to erase it altogether. And he assigns one or two other objections to it, upon which I will for a moment comment.

He says that he would be willing to have a proposition of this nature embodied in the constitutional amendment if, instead of dis-

franchising these insurgents until 1870, it disfranchises them perpetually.

Well, sir, I will not stop to inquire whether that would be going beyond the expectations of the people and beyond our duty or not. I should not, probably, quarrel with my colleague if he could add ten, fifteen, or twenty years, or even a longer period to the term of probation. But I deny the principle on which he sets out that there is anything inconsistent or wrong in making it an exclusion for a term of years instead of exclusion altogether. If there be anything in that argument, you ought not to send a man to an insane asylum for one, two, or three years, at the end of which period you may reasonably expect his intellect to be restored; you ought either to let him roam at large altogether or send him off as a lunatic for life. Or, in the case of crime, you must either not sentence a man to the penitentiary at all, or else incarcerate him for the term of his natural life. Or, to compare it to another thing, which perhaps better illustrates the principle involved, when a foreigner arrives upon our shores we should not say to him, "At the end of five years, when you have familiarized yourself with our institutions, and become attached to them, we will allow you to become a citizen, and admit you to all the franchises we enjoy," but we should require that he be naturalized the moment he touches our soil, or else excluded from the rights of citizenship forever.

Sir, I do not see that there is any principle involved in it. It is a mere question of expediency.

It has also been objected that it is exceptionable to incorporate into the Constitution any condition depending on lapse of time or a term of years—a period within or beyond which something is to be allowed or denied; and this is said to be, therefore, altogether a novel and unprecedented proposition. Sir, I deny even that. Any gentleman familiar with the Constitution will recall the provision that the slave trade, existing at the time of its adoption, should be permitted to run on for twenty years, but might be forbidden at the end of that time.

There is no principle violated, nothing which should prevent us from making the exclusion for two, three, four, ten, or twenty years, or during the natural lives of these insurgents, who seek to be admitted again to the exercise of the elective franchise.

Mr. Speaker, my own decided conviction is, that so far from going beyond the popular judgment and demand

there is no part of all this amendment that will more commend itself to the sense of justice and propriety of the people of this country than this very third section. Everywhere throughout the land, in all loyal minds and hearts, the conviction has settled and grown strong and taken deep and fast hold that those who sought to destroy the Government ought not to be called upon so shortly afterward to undertake to rule and carry on that Government.

I do not believe there is any other portion of this whole proposed amendment to which so general an assent will be given by the people of this country, the loyal and true people throughout the whole broad extent of our land. They are full ready to declare that those who have proved false traitors and have raised their parricidal hands against the life of the country, who have attempted to strike down our Government and destroy its institutions, should be the very last to be trusted to take any share in preserving, conducting, and carrying on that Government and maintaining those institutions. And believing this, I have been all the more astonished that special attack should have been made on this particular section.

A gentleman sitting near me suggested, a moment ago, another objection to this section; one, however, rather to the form and phraseology than to the substance. Rebels are to be "excluded from the right to vote for Representatives in Congress and for electors for President and Vice President of the United States." He says this latter condition, without some more precise and guarded expression, may be evaded; that as the Constitution gives the States the power "to appoint these electors in such manner as their Legislatures may direct," these States may, like South Carolina, give that power to their Legislatures, or even confer it upon their Governors. Now, all I have to say in reply is this: I am not troubled by the word "appoint." If the Legislatures are called upon to appoint electors, they must in appointing vote for them; voting is involved in the manner of selection. And no member of any State Legislature can be permitted to cast his vote for presidential electors, if this amendment be made to the Constitution, if he himself has voluntarily adhered to the cause of the rebellion. There is nothing to be apprehended from the possibility that disloyal voters may choose loyal legislators. If they do, we must trust and accept such choice.

But they may give the power to their Governors. Very well; if the Legislature shall by law direct the Governor to be their agent in the appointment of electors, then you reduce the matter to the test of still easier proof. That Governor cannot appoint, cannot choose, cannot vote for—for those words "vote," "choose," and "appoint" are used indiscriminately in many parts of the Constitution—unless he comes within the provisions of this section if it shall be adopted. I will not say that this proposition might not be embodied in some better form of words—

[Here the hammer fell.]

Mr. SMITH obtained the floor.

RECONSTRUCTION—AGAIN.

Mr. SMITH. I have always felt that when a crime has been committed, an absolute violation of law, upon a proper arraignment and trial and conviction of the party, justice and right and law compel the execution of the sentence. I entertain that opinion now and shall continue to express it. I therefore disagree with the gentleman who has just preceded me, [Mr. SCHENCK,] and the committee upon reconstruction who have reported this joint resolution, that those who have been what are usually denominated "red-handed traitors," who have attempted to destroy this Government and those who have defended it, should be forgiven at this time or even in 1870. I know there is a feeling prevalent in this House and in the country that we must submit to this proposition because there is a sentiment of reconciliation in the words and manner in which it is gotten up and proposed. But, for one, I must dissent, and my name must go upon the record in opposition to those men who have heretofore claimed a higher position for punishing those who have attempted to destroy this Government. I am surprised, and I must express my surprise, that men who have stood by the Government, who have voted men and money to sustain it, who have seen their country overrun, who have seen their armies defeated, who have seen their brothers slain, who have seen large battle-fields rendered gory, should at this time come forward and say that in 1870 the doors should be opened to these rebels and that there should be a general amnesty. You are radical; I am not. You are for general amnesty with universal suffrage; I am not. I stand here as a Union man, and as a conservative man, desirous to restore the Government, to secure the peace and happiness of the people, the unity of the States, and the supremacy of the Constitution. If you ask my consent to the pardon of the leaders of this rebellion, I say "No." But there are men upon this floor who say, "Confiscate their property and let, them go." I say "No." In the Thirty-Eighth Congress I voted for the confiscation of the property of the leading rebels, and I made a speech in advocacy of that position. I stand by that doctrine to-day. But where are the men who advocated the doctrine then, and said, "Not only confiscate their property, but hang them all?" Those men now say, "Pardon them all, and

restore them in 1870 to all the rights and privileges of citizenship." They do not even propose to wait until 1870. They say, "Confiscate their property and let them go." They would apply this doctrine to men who are guilty of rebellion against the Government, of treason against the Constitution, and war upon all our institutions. They say of such as Clement C. Clay, "Let them depart in peace." They would say of Jeff Davis, "Confiscate his property and let him return to his home." All this may suit you; it does not suit me. You are radical; I am conservative. You say "Hang everybody," but you will not hang anybody. You say "Prosecute everybody," but you will not prosecute anybody. You say "Execute the laws," but you do not do it. Not long since the question was asked upon this floor whether you would execute these men through the instrumentality of the President. The answer was "No;" and the reason of that answer was that it was feared that the President would receive a little too much credit for his action in seeing that the laws were executed. I say let these men be tried; if guilty, let them be convicted; and then see whether the President will pardon them when thus convicted. Sir, this will never be done if we trust to these men who are all the time urging their radical schemes, who have forgotten the interests of the country, who seek not the salvation of the Union, but the salvation of party, and the interest of their particular ilk.

The gentleman from Ohio [Mr. SCHENCK] said a few minutes ago that he would not admit that these States were out of the Union; that they had been in the Union and were parts of the body-politic. Well, if that is the fact, how and under what circumstances are they to be gotten out? How are they to be destroyed? The gentleman, in speaking of this subject, adopted a simile, and said that when a child has offended the father whips him, and thus by correction brings him back to obedience to the law. Now, I submit the question whether there was ever on the face of the earth a father who, though he chastised his child because of disobedience, refused that child, even after the chastisement, bread and clothing and a place in his house. The father whips the child from love, remembering all the time that he is "bone of his bone, flesh of his flesh." He chastises him because he loves him.

Now, sir, the honorable gentleman from Ohio [Mr. SCHENCK] has chastised these men. He was a general in the Army, and he helped to chastise them. He did it because he loved them, because they were a part of the family. But now, when he has whipped them into obedience; and they ask to resume their place in the family circle, under the shelter of the great household of the nation, he says, "No, you cannot come in." This is unnatural. It is in violation of every principle that should govern the action of the father toward an erring or rebellious child. It is in violation of those great principles of affection which God has implanted in the human breast, and the disregard of which stamps a man as unworthy the name of man.

Now, sir, these States are in the Union. There is, so far as I know, only one man in this House who says that they are not; and he is the member from the Lancaster district of Pennsylvania, [Mr. STEVENS.] I designate him simply by the appellation of "member."

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But the distinguished men upon this floor on that side say these States are in the Union; and I must call to my support again a distinguished gentleman, a personal friend, one I like, one I may appeal to, but who will not say anything to me just now—the gentleman from Ohio who sits across there; I mean Mr. BINGHAM.

Mr. THAYER. I rise to a point of order. It is out of order to mention by name any member present. I would not make this point upon a new member, but I think I can fairly make it upon the gentleman from Kentucky as the practice has become of late a very common one.

The SPEAKER. The rule is imperative that members must not be referred to except as from the States which they represent.

Mr. SMITH. I only used the gentleman's name in parenthesis. [Laughter.] Now, sir, I have heard the gentleman who called me to order as well as other gentlemen upon this floor mention the names of members in parenthesis. I would like to know, then, by what authority he has called me to order. You will find in the printed speeches the names of members printed in parenthesis.

Mr. THAYER. The names are interpolated by the reporters. The gentleman cannot mention any instance in which I have called the cause of any member upon this floor. I consider it uunparliamentary. I hope in future we will not have any more of it.

Mr. SMITH. I do not want the gentleman to take up all of my time. I wish to say I have precedents. Every gentleman who has any reputation in this country, and who has spoken upon this floor, has again and again called members by name when it was necessary to do so. There is the gentleman from Illinois, I will not mention his name, and many others, have called members by name ten, fifteen, and thirty times.

Mr. WASHBURNE, of Illinois. If the gentleman refers to me I will say that he never heard me call a member by name.

Mr. SMITH. There are other gentlemen on the floor from Illinois.

The SPEAKER. To call a member by name in the British Parliament is considered the highest censure.

Mr. SMITH. Mr. Speaker, I want to have one thing settled right here. I find every time within the last four or five weeks that I have risen to address the House I have been interrupted by questions of order. I am a man of good humor, and you cannot make me mad. I do not mean to do any wrong to anybody, but I do mean to speak the truth. If it offends anybody, why then let them call me to order. I mean to say that none of these States are out of the Union, and that they never have been out of the Union.

Mr. THAYER. I do not want to interrupt the gentleman.

Mr. SMITH. I do not yield to the gentleman. The gentleman with his point of order has diverted me from the course of my argument. I am willing to stand on the principles I have avowed. There is the gentleman from Ohio—I will not call him by name, but the House will see whom I mean by looking where I am pointing my finger—was allowed to go on making his speech without interruption, but how does it happen when I undertake to speak in vindication of the great principle of the Union party I am constantly called to order?

Mr. THAYER. Does the gentleman want an answer?

Mr. SMITH. You cannot answer me just now. I must come back. It cannot be denied that members on the other side have risen here and abused the President, abused his policy of reconstruction and almost everything else that he has presented to Congress. The gentleman from Illinois [Mr. INGERSOLL] spoke here on last Saturday for more than two hours in abuse of the President. Now, I want to know why, if they are allowed to speak against him, I shall not be allowed to speak in his favor. There is nothing that they can propose that will restore this Union. They cannot deny the constitutional prerogative of every State, taxation with representation. It is impossible. It is the fundamental law.

But you say that you are the judges of the qualification of Representatives in Congress, and the Senate are the judges in regard to the qualification of Senators; and so we can decide that question. I venture to say that the gentleman from Pennsylvania [Mr. STEVENS] and all that class of men will vote sooner, especially after the year 1870, to admit these traitors into their seats than I will; and I dare you to try it. You do not hate the red-handed traitors worse than I do, and you dare not go with me on a jury to try them. You would blanch, you would pale, you would sicken, you would crouch, you would forgive before I would, and save these men from execution who have attempted to destroy this Government, and you say it by your very conduct and by the proposition you make to-day. If you want representation by voting, say so, and let us have a plain proposition.

Now, I know it is hard to make a speech in the Congress of the United States without referring to the negro, and I thought I would get through a thirty minutes' speech without doing it. But my friend from Pennsylvania [Mr. KELLEY] could not help talk about the darkey; and my friend over here talks about him, and my friend over there talks about him, and my friends all around the House bring him in. Gentlemen, open your pocket, open your hand, open your heart, and let us see whether Union men from the southern States, and wherever they are found, will not do more than you will.

I happen to know some of you who have been called upon for contributions to feed the hungry and clothe the naked, and you did not respond. [Laughter.] And I know there were others that did. And yet you get up with your loud-mouth declamation and send your speeches over the country advocating the cause of the poor black man, while the poor black man, with his face turned to heaven, says, Lord, deliver time from such friends." [Laughter.] And He will do it, too. [Laughter.] We understand it, and we know that if the negro is to depend on you for his bread and his clothing, (now, I am not speaking of the Union party, but of their leaders in Congress; the men who clamor so much about the negro,) you are the last men on the face of God's earth that will help him. Because, no matter whether a man is worth \$250,000 and owns a rolling-mill, or \$150,000 and is engaged in petroleum operations, or is worth \$500,000 and is engaged in cotton speculations, whenever a poor darkey comes along you cannot do a thing; but if there is an appropriation of \$25,000 from the Government of the United States coming through the Committee for the District of Columbia, then the darkey gets it. It is put into the hands of the managers of the Freedmen's Bureau, and that institution goes along swimmingly and all is well with the negro. There are two extremes.

Mr. KELLEY. Will the gentleman yield for a question?

Mr. SMITH. I cannot.

Mr. KELLEY. Just a question.

Mr. SMITH. Mr. Speaker, how much time have I left?

The SPEAKER. Six minutes.

Mr. SMITH. Well, how long do you want me to yield?

Mr. KELLEY. Half a minute.

Mr. SMITH. Very well.

Mr. KELLEY. I ask the gentleman whether he knows the fate of those who are neither hot nor cold.

Mr. SMITH. Yes, sir.

Mr. KELLEY. And whether that is your position.

Mr. SMITH. Yes, sir, [laughter,] I understand what is the condition of those who are "neither hot nor cold." The Bible informs me they are spewed out, and you are about the worst "spewed out" man I ever saw in my life. [Great laughter.] You take care of yourself and some of your colleagues over there from Pennsylvania.

Now, Mr. Speaker, I want it distinctly understood that the friends of the black man, and I use the words with emphasis, are those who know them, who have been associated with them and familiar with all their characteristics. They are the men who have defended them in the past, and will defend them in the future.

Now, the "spewed" gentleman from Pennsylvania talks about hanging rebels, and hanging all sorts of men. I remember, as he must, too, the time when he saw walking through the streets of Washington, a whole company of black men, dressed in grey, who were prisoners of war. Would you hang them, sir?

Mr. KELLEY. I never saw them.

Mr. SMITH. Then you were blind. [Laughter.] Your deeds were dark, and you could not see what was going on. [Great laughter.] I tell you I saw them, and they were there. I would not hang those men. I would not prosecute them. I would not interfere with them. I would give them a general amnesty, and I would extend it to the great masses of the people of the South.

You will have to live with those people; they are a part of the Government; their States are States of the Union; they are under the Constitution; they are subject to your laws, and they obey every precept that you lay down for them. And, sir, one remarkable thing is this: that if a rebel obeys the law, you want to hang him because he does obey it, you believe the law must be wrong because he assents to it! But, if he violates the law, you want, also, to hang him! What is the poor man to do? If he obey the law he is hung, and if he does not obey it he is hung.

Now, Mr. Speaker, there is one other thing I wish to say. There are two parties in this country who are against this Government, and are attempting to overthrow and destroy it—the one is an extreme party on the one side, and the other is an extreme party on the other side.

Mr. PERHAM. To which party does our friend belong?

Mr. SMITH. If you will keep quiet a moment I will tell you.

I remember very well a beautiful allegory in the Bible, which I have referred to before on another occasion and in a different place. It was when, under the administration of that great and wisest of men, a long time in the past, Solomon, a harlot stole the child of a kind and affectionate mother and claimed it as her own, or kept it to secure a large bounty for its return. The claim of the legitimate mother to the child had no effect upon the harlot. Distressed, heart-broken, and troubled beyond endurance almost, the mother appealed to Solomon for redress and the return of her child. He ordered both women and the child before him, and after hearing both he directed the child to be cut in twain and the one half to be given to the harlot and the other half to the woman the true mother. "Well," said the harlot, "I agree; I am satisfied; let the child be divided." "No," said the mother, "that is my child; I have petted it on my knee, I have nursed it at my bosom; 'tis part of my bone and flesh, and I love it as I do my life; do not kill it, do not destroy it; let the harlot have it, but save it." Solomon said, "Thou art the mother, take thy child." The Government of the United States is our mother; harlots North and South have attempted to destroy the child of the Government, the Constitution and the Union. It was proclaimed in the South, "Let the Union slide;" it was echoed back from the North, "Let the Union slide." They said, divide the Union; they attempted it. A long war was prosecuted for this division, but it failed. The wisdom, energy, and patriotism of the people said "No, we will make sacrifices of blood and treasure and the great institution of slavery; but defend, save, and let live the union of the States." These harlots cry to-day, the Union is dissolved, it is dissevered and gone; the sacrifice made, the destruction of slavery, is not enough; let the child be divided. Their fol-

lowers, but few in number it is to be hoped, however, say; "Let the Union slide;" but the party to which I belong, the great party of the Union, say "No; we love the Union; it gives us life, protection, homes, plenty, liberty, individual freedom, and 'by the Eternal it shall be preserved.'" Now, I hope the gentleman understands to which party I belong.

The hour of half past four o'clock p. m. having arrived, the House, pursuant to order, took a recess until half

past seven o'clock p. m.

RECONSTRUCTION.

Mr. SPALDING demanded the regular order of business.

The House accordingly resumed the consideration of the joint resolution (H. R. No. 127) proposing an amendment to the Constitution of the United States, reported from the joint committee on reconstruction.

The motion to recommit the joint resolution had been made by Mr. STEVENS.

The pending question was upon the motion of Mr. GARFIELD to amend the motion to re-commit by adding instructions to the committee to report the proposed amendment to the Constitution with the third section stricken out.

Upon this question Mr. Smith was entitled to the floor for one minute; but he was not present.

Mr. BROOMALL. Mr. Speaker, it was to be expected that the measure now before the House would meet the opposition and denunciation of the unrepentant thirty-three of this body. The gentlemen who have voted on all occasions upon the rebel side of all questions that have been before the country for six years could hardly be expected to change their position at this time.

Mr. ROSS. Will the gentleman allow me to ask him a question?

Mr. BROOMALL. Allow me at once to say that I have but thirty minutes, and will not yield any of my time to anybody.

I say, Mr. Speaker, that it was not to be expected that those gentlemen would change their front upon short notice at this late day. But it is useless to waste arguments upon them in favor of this measure.

It was also to be expected that the six Johnsonian new converts to Democracy would also oppose and vote against this measure; commencing with the gentleman from New York, [Mr. RAYMOND,] who, I believe, has the disease in the most virulent form, thence down to the gentleman from Kentucky, [Mr. SMITH,] who preceded me on this question, and who has the mildest and most amiable type of the infection. Upon them, too, arguments are useless.

There must then be thirty-nine votes against the measure, and I want there to be no more. I want every member of this House outside of those thirty-nine to vote for it heartily and earnestly. I want every man to come to the conclusion to which I have come, to vote, if not for that which he wants, for the best that he can get; to vote for the report of the committee if he can get it, just as he would have voted for something better; and if he cannot get the measure reported, then to vote for the next best.

It is not what I wanted. How far short of it! But the necessity is urgent, and we must take what will obtain the votes of two thirds of both Houses of Congress, and the ratification of three fourths of the actual States of this Union, those entitled to a voice upon the question.

Now, what is this that is submitted for our action? I will consider the several propositions briefly: I am only sorry that I am limited to so short a space of time. We propose, first, to give power to the Government of the United States to protect its own citizens within the States, within its own jurisdiction. Who will deny the necessity of this? No one. The fact that all who will vote for the pending measure, or whose votes are asked for it, voted for this proposition in another shape, in the civil rights bill, shows that it will meet the favor of the House. It may be asked, why should we put a provision in the Constitution which is already contained in an act of Congress? The gentleman from Ohio [Mr. BINGHAM] may answer this question. He says the act is unconstitutional. Now, I have the highest respect for his opinions as a lawyer, and for his integrity as a man, and while I differ from him upon the law, yet it is not with that certainty of being right that would justify me in refusing to place the power to enact the law unmistakably in the Constitution. On so vital a point I wish to make assurance doubly sure.

I know that the unrepentant Democracy of this body voted against the civil rights bill upon the allegation that it was unconstitutional. And I rather expect to see them exhibit their usual consistency by voting against making it constitutional upon the ground that it is so already.

That measure, however, will meet with no opposition from those on whom the country depends for its safety, because if it is not necessary it is at least harmless. If we are already safe with the civil rights bill, it will do no harm to become the more effectually so, and to prevent a mere majority from repealing the law and thus thwarting the will of the loyal people.

The second proposition is, in short, to limit the representation of the several States as those States themselves shall limit suffrage. That measure has already received the sanction of all who can possibly be expected to vote for the proposition now before the House; because the joint resolution which passed this body by more than two thirds, and was defeated in the Senate, proposed to submit a similar change in the Constitution to the States for ratification. There is, therefore, little necessity for argument upon this point.

But I will ask, why should not the representation of the States be limited as the States themselves limit suffrage? It is said that this is intended to prevent the southern States from having the representation now based upon their black and non-voting population. The terms of the proposed measure do not so limit it. But I will admit that mainly it will operate only on that population, and in the South. And why not? If the negroes of the South are not to be counted as a political element in the government of the South in the States, why should they be counted as a political element in the government of the country in the Union? If they are not to be counted as against the southern people themselves, why should they be counted as against us? The fact is, the negro of the South does vote, or rather he has his vote cast for him. He is voted by his white and hardly more loyal neighbor—I would say brother only that I might be suspected of having some sly reference to the Democratic bleaching process which so confuses southern genealogies.

If the blacks were permitted to vote instead of being voted, according to the doctrine of chances they would vote right half the times by mere guessing, be they ever so ignorant; and this is greatly more than can be said of their white neighbors for the last half dozen years. I will not say that this is more than can be said of the northern friends of those neighbors for the same period; but I will not risk my reputation for veracity by denying the proposition.

The next proposition proposes to disfranchise until 1870 a certain portion of the southern people. Now, I am sorry to see that opposition to this feature of the measure comes from this side of the House. I regretted very much yesterday to hear the gentleman from Ohio [Mr. GARFIELD] and the gentleman from Maine [Mr. BLAINE] oppose this feature of the joint resolution. I am sure they have not well considered it. Let us see who it is we propose to deprive of suffrage until 1870, and to what extent.

First, we do not propose to do what was done at the close of the Revolution, to disfranchise throughout all time to come the active and willing participants in the mischief, but only until the year 1870, only for the next four years. Again, we do not propose to deprive all the voters of the South of the privilege of voting, but only the willing aiders and abettors.

Look at the words of the proposition:

All persons who voluntarily adhered to the late insurrection, giving it aid and comfort.

Now, who are they, and how many are there of that class? This is an important inquiry. It has been said broadly, with the air of sincerity, and as if it were susceptible of being demonstrated, that these people number nine tenths of all the voters of the South. This is a grand mistake. The white population of the eleven States not now represented in the Government was in 1860 five million six hundred thousand in round numbers. Counting the voters as one fifth—and that is about the ordinary ratio of voters to population—we have one million one hundred and twenty thousand voters in those eleven States. Do we propose to disfranchise all these? Do we propose to disfranchise nine tenths of them, as has been said here? By no means.

According to the best estimates that can be made upon the subject—and all are mere estimates. for we are without the means of obtaining accurate information—there were altogether in the southern army about eight hundred thousand men. How many of them were negroes I do not know. I know that the southern Democrats at first entertained the notion of their northern friends, that the negro would not do for a soldier, but after several years of conscription and draft, both wings of the party began to think he would. Toward the close of the rebellion the South commenced to muster the negro into the service. Suppose there were fifty thousand of them—it is true that is but a guess, there may have been twice as many or half as many—this would leave seven hundred and fifty thousand white men actually participating in the rebellion in the field.

Now, let us bear in mind that the masses of the people in the South rendered aid and comfort to the rebellion only in the field. The great leaders of the Democracy rendered, it is true, aid and comfort in various other ways. But they constituted the few. I speak of the masses of the people only; and I repeat that they rendered aid and comfort, within the meaning of this provision, in the field only. We may therefore take seven hundred and fifty thousand as the number of the individuals in the South who rendered aid and comfort to the enemy, not counting (because the number is so inconsiderable) the comparatively few though powerful leaders who rendered aid and comfort outside of the army.

But, sir, we do not propose to disfranchise even these seven hundred and fifty thousand. Some of them were killed; how many we do not know. We do know that our own dead numbered nearly three hundred thousand; and we have every reason to believe the confederacy suffered to the same extent that we did in that matter. Supposing two hundred and fifty thousand of the rebel army were lost, we have five hundred thousand actual voters in the South to be disfranchised by this measure if they come within the meaning of it. But do they come within the meaning of this provision? Why, sir, it does not embrace the unwilling conscripts; it does not embrace the men

who were compelled to serve in the army. How many were there of these? I do not know; but I do know that after the first few months in the war of the rebellion the southern people refused to volunteer, and were required to be forced into the army. How many were there of these so forced? If I were allowed to guess, I would say very nearly all. At least it would be fair to say three hundred thousand of these people belonged to the unwilling class who were forced into the army by rigid conscription laws and the various contrivances of the leading rebels. This will leave two hundred thou-

sand; and I say now it is utterly impossible, in my opinion, that the number of people in the South who can be operated upon by this provision should exceed two hundred thousand, if, indeed, it should reach the one half of that number. Is this nine tenths of the voters of the South? Why, it is about one in every twelve.

I am just reminded by my colleague [Mr. WILLIAMS] that the report of the committee shows us that these eleven States furnished forty-two thousand soldiers to the Union Army. I suppose no one on this side the House will pretend that the pending measure will disfranchise them, whatever may be the desire on the other side. These men can take the "test oath." Why can they not fill Federal offices in the South?

It is looked upon, Mr. Speaker, as a monstrous piece of tyranny that we should ask one out of twelve of the voters to stand aside for four years, to take a back seat, in the classic language of the White House, as a part expiation—if the word is not itself a mockery used in that connection—in part expiation of so enormous a crime. Let it be understood that we do not propose to disfranchise these people for State purposes. They are allowed their own local government, if the people of the States will permit them to vote. They will only not be allowed to control this Government, and they ought not to be allowed to control it. So far as we are concerned, we give them local government to the fullest extent to which we have it ourselves. It is known to every gentleman in this Hall that by far the largest portion of the business of government is done in the States. With respect to this largest portion, we leave it to these States to grant or refuse suffrage, without regard to the condition, the opinions, or the crimes of those claiming it. So much for that.

Now, I know we have it from high authority that in all the southern country there are not enough of men who can take the oath prescribed by the law to hold the Federal offices. I know that is asserted, but I have no belief in it whatever. I am satisfied that it is not true. I do not know why that assertion has been so boldly made unless for the purpose of enabling the Democrats of this body and the new converts to obtain a repeal of the "test oath," and thereby to give seats in Congress to some of their southern political friends. I do not know why otherwise that notion was started, but that it is not true any reflecting man who will read the history of the last five years must see. We know what the truth is. It is this: the manner in which the present Administration has punished treason has made it not odious, but indeed the only popular institution of the South, so that if a man can take the oath he is afraid to let his neighbors know it. Treason has been made popular in the South, and loyalty odious. A man who has always been loyal is compelled by public opinion, forced upon and encouraged in the South by the Administration, compelled, I say, to deny his loyalty, and to simulate treason. Where are the forty-two thousand southern Union soldiers?

The third of these propositions is to prevent the payment of the rebel debt by the United States or any of the rebel States, and to prevent compensation from ever being made for slaves. Is there anybody here who has any objection to that? The former measure has received the sanction of the House heretofore by the requisite two-thirds vote, and might be passed by as a thing settled upon. Is there any reason why we should guard against the payment of the rebel debt? It is strange that there should be necessity for it; but that there is such necessity no one here can doubt. A large portion of this debt is held abroad. The foreign allies of the Democratic rebellion contributed their money to aid the party here; and if the Government of the United States does not provide irrevocably that they shall lose the investment, it will be false to every duty it owes to its citizens. But there is a considerable portion of this debt held by southern Democratic leaders; and it is to guard against the paying of this that the great necessity exists for putting this provision into the Constitution. It may be that the punishment of our country for its national sins is not yet complete. It may be that in the future an inscrutable Providence intends, for our full punishment, to restore to power for a time the Democratic party. What would be the result then? We know what would be the result. I want to put it out of the power of the Government to pay the rebel debt, that our friends on the other side of the House may not at some time be tempted by their old habit of obedience to the southern task-master. These men who have voted upon that side of all questions can hardly be expected to withhold their votes when their possible future leaders shall demand that the rebel debt be paid as far as they are concerned. The only way to guard against that effectually is to put the provision itself in the Constitution

prohibiting any portion thereof from ever being paid.

The latter branch of the fourth section prohibits the giving of compensation for slaves. Now, a prominent Democratic member of this House, whose name I will not mention without his consent, yesterday told me that when the Democratic party—he did not say "if," but "when," and he did not even blush to say it—when the Democratic party came to be restored to power it would demand payment for emancipated slaves or the repudiation of our national debt, and I confess I believed him.

Can any man doubt what the position of the Democratic members of this body will be with fifty-eight added to their number from the rebel States—fifty-eight Representatives of those whom they have for years obeyed and who will demand this of them?

Mr. LE BLOND. Mr. Speaker, I demand the name.

The SPEAKER. The gentleman declines to be interrupted.

Mr. BROOMALL. If any man hesitates to believe with me, let him look over the files of the Congressional Globe for the last four years, and then if he is not convinced I will concede that he is beyond the reach of conviction.

They say that we offered in 1861 to pay for these slaves. So we did, and if the offer had been accepted we would have gained largely by it. The cost of the war, counted only in dollars, would have largely paid for all the slaves. But the offer was not accepted, and it will never be renewed with the consent of the loyal people. Let our political opponents call the dead to life, let them restore to their homes three hundred thousand murdered American citizens, and then let them pay the debt which we contracted in putting down their rebellion, and we will renew our offer. We will then pay for their slaves and gain largely by the transaction.

Mr. Speaker, this measure has been spoken of as the punishment to be imposed upon the South. Why, is this all that is proposed to be inflicted upon men who have been guilty of crimes so monstrous? Is there to be no further punishment than this? Is treason not to be rendered odious? In fact, this is not a punishment at all. These people have now no rights. They are the conquered, we the conquerors; and the conquered, as everybody knows, must look to the conquerors for their future political and civil position. We propose to grant rights, we propose to give favors, but we propose to leave out one in every twelve for four years in thus giving the favors. It is not as punishment, it is as a means of future security, that this provision is asked to be incorporated in the Constitution. We have beaten the enemy in the field. He is at our mercy. In a spirit of unparalleled magnanimity, we propose to restore the *status ante bellum* as far as is consistent with our future safety. Why, there never were such terms as these offered to any vanquished people by the victors. Look through all history and find its parallel. In every other country what has been the penalty allotted to treason, to rebellion that fails to make itself revolution? Death, banishment, confiscation. Look at England in the Indies and in Jamaica! Yet we propose not even punishment, not even the enforcement of existing laws.

These people have murdered two hundred and ninety-thousand of our fellow-citizens. The man Probst, who in Philadelphia has been tried and sentenced to be hanged for murder, killed eight persons. That poor, miserable, petty scoundrel only killed eight; those people have killed two hundred and ninety thousand. He is to be hanged, and Alexander H. Stephens, who was one of the main supporters of the rebellion, is to be allowed a seat in the Senate of the United States. What a mockery of human justice!

Sir, the time will come when the poor, ignorant Dutchman who committed his petty crime will be brought to the same bar with Vice President Stephens who aided in the murder of so many of the good and the true men of our country, and these things will all be made even. There is a necessity for a future world that the immense inequalities of the present one may be rectified.

Let it offend no Democratic sensibilities that I should contrast Probst and Stephens, the murderous Dutchman and the murderous conspirator. If there is any one man in the South peculiarly responsible to the widows and the orphans of those whose bones lie upon southern battle-fields or are worn as ornaments about the necks of high-born Democratic ladies, that man is Alexander H. Stephens. He sinned against light and knowledge. He was the great champion of the Union in the South. When he was bribed by the love of office into crime, what wonder that the great masses of the South followed him?

Why, even Probst was the pupil of Stephens. Probst was a soldier, serving by accident on the right side. Stephens made his school, inaugurated the war. Sir, read, if you can read, the Miserable man's confession, and then ask yourself whether those horrible details could have been gone through by any one who had not learned the art of human butchery in the school of war.

Both these men "accept the situation;" both acknowledge that they have been defeated in a war upon society; but Stephens appears before a committee of Congress and actually claims rights, like the Pharisee in the temple;

while poor Probst can only say, "Lord have mercy upon me a sinner."

Probably my Democratic friends may not like the comparison. Neither do I. I will not put the ignorant upon a level with the learned in responsibility. I will not apply the same rule to the private soldier and to the statesman. I will not compare the murderer of only eight with the murderer of two hundred and ninety thousand. Yet Probst is to be hanged, while the President of the United States and the Democratic members of Congress are at this moment asking exactly such a modification of the "test oath" as will allow Stephens a seat in the United States Senate! Oh, what a mockery of justice in this! Break down your prison doors. Repeal your criminal codes. Let it not be said that in enlightened America we only punish the poor, the ignorant, and the degraded!

To bolster up the pet theory of restoration founded on rebel rights, it is now denied that we have ever been at war. War supposes conquest as one obvious mode of termination, and conquest extinguishes political rights. This would not suit the purposes of those who think the South was right in her demands, but only blundered in the means employed to obtain them. Hence there has been no war, whatever the soldiers and the bereaved ones may think to the contrary.

The President of the United States, in his recent peace proclamation, has given us from a Democratic standpoint the military history of the country for the last five years. He says that in 1861 certain persons in certain States

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conspired together to prevent the execution of the laws; that the Government resolved to put down the conspiracy, not in the spirit of conquest, but in that of self-preservation, and that the insurrection has now been suppressed and this is all. This is the official report of the high Executive to his grand constituency.

From the cold official statement, who that did not feel and know these eventful years could imagine what scenes of human sorrow are embraced within the unwritten history of that period? There was an insurrection, and it has been suppressed. Has sated ambition forgotten the immense cost to the country of the process by which it became what it is? Why, in this brief history there are hundreds of thousands of treasons unpunished. In this the blood of more than a quarter of a million murdered victims cries aloud for retributive justice. And this the President of the United States calls insurrection. Why this history would exhibit great armies, such as the world has rarely seen, devastating whole States, and meeting in grand and terrible conflict—all the machinery of war in its largest possible extent.

But who shall write the details? Who shall tell the instances of individual suffering? Who shall say how many husbands and fathers asked but one day of absence from the Army to bury the wife or child and were of necessity denied? Who shall tell of the tired sentinel, awakened at his post after days and nights of toil, from dreams of home, to answer at the bar of the terrible court-martial for not doing what man could not do? Who shall tell of the secret sorrow of the unpensioned widow and orphan of him who fell from the ranks upon the long and weary march to die the death of the dog by the roadside and be marked upon his country's roll of dishonor as a deserter?

Yet the President of the United States calls the occurrences of the last five years insurrection, and tells us with true official coldness that it is suppressed! Surely sated ambition has overlooked the immense cost of what it feeds on. If this is insurrection, in the name of all that is horrible what is war?

America transcends her elder sister in the length of her rivers, in the height of her mountains, and in the tremendous energy of her people. And we are now told that that transcendence extends even to the art of human butchery. When an American insurrection is so like the most devastating of European wars, the imagination shrinks with horror from contemplating what would be an American war. Surely the heart of the Executive is not in sympathy with the millions who made him what he is.

Mr. SHANKLIN. Mr. Speaker, the subject now before the House for its consideration is a matter, perhaps, of as much importance, and involves as many important interests to the American people, as any subject upon which the Congress of the United States can have to pass. Upon its solution may depend the weal or woe of the American people and their descendants. Those institutions, republican and free in their character, reared by the wisdom, the patriotism, and the sufferings of our revolutionary sires, and consecrated by their blood, may depend upon the action of this Congress upon this subject.

It becomes us, then, as the Representatives of a generous and confiding people, who hold these important interests and trusts in our hands, to divest ourselves as far as is possible of every angry passion, to banish every sectional prejudice or partiality, to discard personal interest and considerations, to break the lines of party, and to rise above considerations of that kind to a higher and purer sphere, that we may act for the general good of the whole country now and forever. If we could but do this our labors would be easy, our task would be more than

half performed in its very commencement. But if, from the frailty of our natures and our passions, we are unable to assume a position of this sort let us at least approach our task with clean hands, pure hearts, and patriotic intentions.

Mr. Speaker, the subject which has been submitted to this House for its consideration comes to us clothed with all the power and the commanding influence of a committee of the two Houses of Congress, selected, as charity compels us to suppose, on account of their experience, their wisdom, their justice, and their patriotism; and that which has been submitted to us is the work of five long and tedious months, and represents the views, sentiments, and principles of at least the majority of the House, or the party from which they were selected.

I therefore approach this subject with no ordinary degree of embarrassment and hesitancy; but my own convictions of truth and justice, of right and of duty, must control my action, and I am ready to take whatever responsibility may attach to it.

The joint resolution reported by the committee, and which is now before the House, is as follows:

Article —

Sec. 1. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person, within its jurisdiction, the equal protection of the laws.

Sec. 2. Representatives shall be apportioned among the several States which may be included within this Union according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But whenever, in any State, the elective franchise shall be denied to any portion of its male citizens not less than twenty-one years of age, or in any way abridged, except for participation in rebellion or other entries, the basis of representation in such State shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens not less than twenty-one years of age.

Sec. 3. Until the 4th day of July, 1870, all persons who voluntarily adhered to the late insurrection, giving it aid and comfort, shall be excluded from the right to vote for members of Congress, and for electors for President and Vice President of the United States.

Sec. 4. Neither the United States, nor any State, shall assume or pay any debt or obligation already incurred, or which may hereafter be incurred, in aid of insurrection or of war against the United States; or any claim for compensation for loss of involuntary service or labor.

Sec. 5. Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

That joint resolution presupposes and takes as an established fact that those States lately in rebellion are no longer members of the Union; that the ties which bound them to this Government have been severed, and that the people of those States are aliens and foreigners to this Government. That is the position which has been assumed by this committee, and upon that hypothesis this resolution and these measures are based. I do not design now to discuss the question whether these States are in or out of the Union. That question has been ably and elaborately discussed. Our minds are made up upon that subject. The mind of the public is made up upon that subject. But we all remember that at the commencement of this difficulty these States asserted that it was a constitutional right which they had to withdraw from the Union and form independent and separate governments themselves, and in obedience to this claimed right they passed their ordinances of secession. We took the ground, and rightfully too, as I believe, that they had no such right under the Constitution which had been framed by our fathers; that they owed allegiance to the General Government; that they must obey the laws and Constitution of the General Government, and that they could not withdraw from it. The issue was fairly made up. One party contended that they had the right of secession and to sever the ties which bound them to the Union; and the other party, as I think rightfully, took the ground that they had no such right; and the issue was made and submitted to the arbitrament of arms.

Mr. Speaker, after four long years of bloody war, the most desolating that the world has ever seen; after the sacrifice of half a million of our Federal soldiers and citizens, and the slaughter, perhaps, of nearly as many more of the confederate people; after the expenditure of more than four thousand million dollars, a debt entailed upon this country, and which will be handed down for years and years to come, our armies triumphed. These people who asserted this right of secession surrendered it; they said they would give up the contest. They laid down their arms and dispersed; and they then expected to come back into the room and to assume the places which they had occupied before. But they are met at the threshold with, "No, no; you are aliens and foreigners, and you cannot come into this Government unless upon such terms as we may propose to you."

You went to war to sustain the Constitution of the United States and to enforce all the provisions of that Constitution. We triumphed, and then we turn around and say that all their constitutional rights have been lost. We say to them, "You made war to go out of the Union; you have failed with your armies to accomplish your purpose to get out of the Union; and yet you are out of the Union. We fought to keep you in the Union and we triumphed, yet you are out of the Union." That is the result of this whole proposition, and the logic of the committee.

Mr. Speaker, there are two prominent and distinct ideas contained in this proposition. The first idea is to strike down the reserved rights of the States, those rights which were declared by the framers of the Constitution to belong to the States exclusively and necessary for the protection of the property and liberty of the people. The first section of this proposed amendment to the Constitution is to strike down those State rights and invest all power in the General Government. It is then proposed to disfranchise the people of the southern States who have gone into this rebellion, until the party in power could fasten and rivet the chains of oppression for all time to come, and hedge themselves in power, that they may rule and control those people at will. Those are the two ideas contained in this proposition.

Now, how do you propose to carry out that second idea? Is it by degrading, by humbling, by humiliating these people, and rendering them unworthy of the blessings of liberty or of being recognized as citizens? Do you expect to effect the object in that way? Do you expect, by the terms you propose to impose on those people, to render them willing serfs and slaves to your power? If they will submit to the burdens which you propose, then they ought not to come back into this Union; for they will be unworthy to hold the position of American citizens.

But how are you going to humble and degrade these people? By disfranchising them, by oppressing them with taxes, by denying them representation, by dragging them down to the loyal political and social equality with the servile African race. You may impoverish them, you may exterminate them, but you can never reduce them to the condition when they will kiss the band that strikes them.

How long do you suppose it would take to bring you to that condition? How long would you struggle against those acts of oppression, those acts of tyranny, before you would bow in submission as slaves and serfs? Do you suppose these people in the southern States are intellectually, morally, or physically your inferiors? Certainly you do not believe that. They may be disloyal in the estimation of some. But I will assert that so far as we know these people from their past history, they are not your inferiors physically, morally, or intellectually.

The people of the southern States and the people of the northern States stood side by side in the great battles of the revolutionary war; they met in the councils of the nation; they were as brave upon the battle-field, as wise in the council, and as safe advisers as the people of the northern States. They were the peers and the equals of the people of the North.

In the war of 1812 they stood by the Government and they drove back the foreign invader. Were they your inferiors then? Does history establish that to be the fact? They were your equals wherever tried and wherever met.

In the war with Mexico, men from South

Carolina and men from Massachusetts and Rhode Island stood side by side on the battle-fields upon the plains of Mexico. Were not the men of the South as brave and gallant as the men of the North? Did they shrink from responsibility? They were your equals in every point of view.

From the commencement of this Government down to the commencement of this unfortunate war they met in councils of the nation; they met in judicial forums; they filled executive, judicial, and ministerial offices side by side with men of the northern States, and in every station and position they were the peers and equals of the men of the North.

You have recently met them in this civil war, with five times their population and ten times their resources, and they kept your gallant and brave armies at bay for four long years. Their councils were as wise, their measures were as judicious for prosecuting the war and to effect the objects which they had in view as yours were. They kept you at bay. The cannon of their army were heard as often in this capital as your cannon were heard in their capital at Richmond. Does this prove that they are your inferiors? You overcame them by numbers, not because you were their superiors in wisdom, in gallantry, in bravery. I admit and assert that they erred in this matter. They claimed rights which did not belong to them. Thousands of them, however, believed that they had these rights. They acted upon that belief: But, sir, they have now surrendered all those claims. What policy will you now pursue toward them?

Mr. Speaker, if the doctrine of the party in power is true, that those States are out of the Union, that they have

cut loose from their obligations to the Constitution, and taken themselves outside of the pale of that instrument, I ask you what have you gained by this war. We waged a war to prevent their going out; we waged a war for the purpose of enforcing the laws against them. We were successful, as gentlemen say. The people of the South waged a war to go out of the Union. They were unsuccessful. Yet the doctrine of the party in power admits that the rebels succeeded in accomplishing the object for which they fought.

I ask again, what have you gained? Have you kept them in the Union? You say that you have not. Have you maintained and supported and enforced the Constitution? You say that you have not. Then what have you gained by this war which has cost this nation so much blood and treasure? All that you have gained is that you have entailed upon yourselves and upon posterity a debt which bears the nation down, and will continue to bear it down as an incubus. You have freed, it may be said, four million slaves. Yes, you have freed four million slaves, who were productive laborers, who were contented and happy and well provided for, and you have thrown them upon society unprepared for their condition, destitute of that training and education which are necessary to enable them to protect themselves. You have converted one half of them into vagabonds. That is a part of the fruits of this war. You have done more. By the demoralization of these people, and by the policy which you have adopted ill regard to them, you have imposed upon the people a debt which I will not attempt to estimate, for the purpose of supporting a pet institution called the Freedmen's Bureau.

Perhaps you have gained another object. You have through that bureau manufactured the materials that have filled the galleries of this Hall during the whole session. Crowds of these negroes have hung over us like a black and threatening cloud, while we were crucifying the Constitution of our fathers and trampling under our feet the rights and liberties of the people in passing the Freedmen's Bureau bill, the civil rights bill, and the indemnity bill. They have joined in the shouts of triumph which have gone up when this House has trampled on the rights of the people and set at naught the provisions of the Constitution.

What more do you propose by this measure? You deny to the States the right of repudiation. Yet, in the very act of denying that right, you yourselves commit an act of repudiation. You violate the honor of the nation, which is most solemnly pledged in payment for the slaves which were enlisted in the United States Army in loyal slave States. In my State, Kentucky, more than thirty thousand negroes enlisted in the Union Army. Before that enlistment an act was passed by this Congress, pledging the faith of the nation to payment for the slaves that might be enlisted in the Union Army in loyal slave States, not exceeding \$300 apiece. Has such compensation ever been made? It has not. The nation is pledged to the payment of that debt. The nation to-day owes to my State more than \$10,000,000 under the provisions of that act. Yet now you propose a constitutional provision denying both to the States and the General Government the right to pay such debts. By this measure you propose to violate the plighted faith of the nation; you propose to practice upon the people an outrage and a violation of their rights.

But, Mr. Speaker, we are asked by gentlemen here, and asked with an air of great confidence and triumph, "Do you want these rebels to take seats in Congress? Are you willing to admit to participation in the Government rebels who have sacrificed and slaughtered our people?" No, sir.

If these people are not pardoned and acquitted then they have no right, as they have violated the laws of the country, to enjoy all the blessings of the protection of this Government; but if they have been pardoned, if the political sins of which they have been guilty have been wiped out, do you think your garb of loyalty and patriotism is made of such flimsy stuff that association with these men would soil and contaminate it? The mighty host, we are told, that is gathered around the throne of the Most High is composed of pardoned sinners, the associates and companions of angels. But a pardoned rebel must not associate with the political Pharisees of this House!

Where are you going to? You are not willing to associate with pardoned rebels. I understand the distinguished gentleman from Pennsylvania, [Mr. STEVENS,] who is ever fruitful in resources in getting you in and out of difficulties, is going to set up a little concern of his own, and you who have been faithful to him in life ought not to desert him in death, and then you will be free from the contamination of pardoned rebels, mercy, and charity. Nor will you be haunted and tormented with the veto messages of Andrew Johnson, the wise patriot and statesman.

Mr. Speaker, there is but one other subject. What ought to be our policy here? Should it be tyrannical and oppressive, or should it be liberal? We are told we cannot trust these people. They have given up the right of secession; they have taken the oath to support the Government and the laws; what are you going to do with them? Are you going to hold them in subjugation? England has tried a policy of that sort toward a noble and generous people, the Irish. What has been the result of that policy? Has it been to conquer them? It has been to implant in the bosom of every Irish-man a deep hatred of England. That hatred has descended from sire to son; and I hope it

will continue to be transmitted until that noble and generous people will rise in majesty and power and secure their freedom. Russia has pursued a similar policy toward Poland. Has the result been to subjugate the gallant Poles? They are ready at any moment to rise in rebellion. Austria has pursued the same policy. The result has always been the same.

The southern people whom it is proposed to subjugate are a noble, brave people. They may have been deluded, they may have committed a great crime, but they are now anxious to unite with all of our people to sustain the Government. Will you receive them? Will you make them your friends? Will you rather make them your enemies? This question we must solve.

They would be a most invaluable friend. And in my opinion they would, if you would adopt a kind, generous policy toward them, receive them and extend to them equal State and individual rights, and that without delay. By your treatment prove to them that the war you waged against them was not a war of conquest or subjugation or from malice or vengeance, but a war to maintain the Constitution of our fathers and the rights of the Union of the States, as you declared it was when you took up arms and when the strife commenced. Redeem your plighted faith by your acts and your policy, and peace, friendship, and prosperity will once more cover our now distracted country. Then we can bid defiance to the enemies of our free institutions. No nation, however proud or domineering she may be, will dare insult our flag or deny our just rights. Generations unborn will rise up to praise and bless your memories.

Let me beseech you in the name and behalf of patriotism, justice, and a downtrodden and oppressed people, to cease your war on the President of your selection and choice, who has exhibited to the world the highest order of wisdom, patriotism, charity, justice, and devotion to the equal rights of man. We will once more see the charred cities and villages that now dot a large portion of our Union rise up in fresh and pure proportions; our desolated fields will again blossom as a garden of roses. But above all, under the wise and just lead of President Johnson, we will see our people gather around our country's altar, and under the flag of a restored nation renew their vows of obedience and devotion to the Constitution of our fathers. But should you who now hold the power in this House persist in your persecutions and relentless oppression, you may yet live to see the day when you will regret the folly and madness that now hurries you to the overthrow of your power. It may be the overthrow and destruction of the best Government that ever blessed mankind. That your measures of policy will lead to peace or harmony no dispassionate man can for a moment hope. You may discover when it is too late that you have pressed your unequal laws beyond the point from which you can retreat. You may bring down upon your country and Government the condemnation of all enlightened, civilized nations, and you may build up a nation of just enemies in your midst, and this land may again be drenched and deluged with fraternal blood. May we and our children be spared from that terrible ordeal, is the prayer of one who loves his whole country. Discharge your joint committee on reconstruction; abolish your Freedmen's Bureau; repeal your civil rights bill, and admit all the delegates from the seceded States to their seats in Congress, who have been elected according to the laws of the country and possess the constitutional qualification, and all will be well.

[Here the hammer fell.]

RECONSTRUCTION—AGAIN.

Mr. RAYMOND. Mr. Speaker, I took occasion at an early stage of the session, while making some remarks on the general subject of restoration, to say that, in my judgment, the joint committee to which it had been referred, ought to lay the whole of their plan upon our tables before asking us to act upon any of its specific parts. I congratulate myself, sir, that, although when first made the demand was

received with anything but favor, the committee now concede its justice by complying with it. It seemed to me then, as it seems to the committee now, that when a proposition embracing several branches more or less interdependent and all essential to the object sought to be attained, justice and fair dealing required that Congress should have possession of the whole case before being required to act upon any of its parts. We may see the result of a different course in the recent experience of the British House of Commons. That house was called on to consider a scheme of parliamentary reform, consisting of two branches, one an extension of the suffrage, and the other a reapportionment of representation, or, as they style it, a redistribution of seats. The ministry submitted its programme for the first but withheld the second. Thereupon a portion of the ministerial party demanded to see the whole plan before acting upon part of it. The ministry refused to comply, and the result of their refusal was that,

although they commenced the session with a majority of sixty, they carried the bill on its second reading by the meager majority of five, in a House of over six hundred members.

I am glad to see that the reconstruction committee does not imitate the obstinacy of the British ministry. After long delay and several attempts to carry single parts of its proposition, it now submits the whole of the plan by which it proposes to restore the Union. I must say that I see nothing in the report which required any such delay, nothing which depends for its validity or force upon the evidence which, with such protracted pain, the committee has spent five months in collecting. And it is fortunate for us that this is so, for Congress is not yet in possession of any considerable portion of the testimony. It has not yet been printed and laid upon our tables to guide our action.

But, sir, without dwelling further upon these preliminary matters, I will proceed to state the nature of the report which has thus been made. The programme of reconstruction reported by the committee consists of three parts: first, a series of five constitutional amendments upon as many different subjects, each distinct from the other; and then two bills, one providing for the admission into Congress of Representatives from the States lately in rebellion upon certain conditions, and the other excluding from Federal offices for all time to come certain classes of persons who have been engaged in that rebellion. The House has ordered that these three propositions shall be taken up in succession, and the proposed amendments to the Constitution are the only topics which are properly before us for our action now. I concur fully in the suggestion of the President of the United States, that it would be wise, when acting upon amendments to the Constitution, that all the States to be affected by them should be represented in the debate. I do not understand him to hold, I certainly do not hold myself, that the presence of them all is essential to the validity of the action we may take; and inasmuch as they are to be submitted, if adopted by us, to all the States of the Union for their ratification, and as the assent of three fourths of all those States will be required to make them valid as parts of the Constitution, I aim quite willing to take action upon them here even in the absence of those States which are as yet without representation.

And now, sir, with regard to these amendments, five in form, but only four in substance, I have this to say: that, with one exception, they are such as commend themselves to my approval. The principle of the first, which secures an equality of rights among all the citizens of the United States, has had a somewhat curious history. It was first embodied in a proposition introduced by the distinguished gentleman from Ohio, [Mr. BINGHAM,] in the form of an amendment to the Constitution, giving to Congress power to secure an absolute equality of civil rights in every State of the Union. It was discussed somewhat in that form, but, encountering considerable opposition from both sides of the House, it was finally postponed, and is still pending. Next it came before us in the form of a bill, by which Congress proposed to exercise precisely the powers which that amendment was intended to confer, and to provide for enforcing against State tribunals the prohibitions against unequal legislation. I regarded it as very doubtful, to say the least, whether Congress, under the existing Constitution, had any power to enact such a law; and I thought, and still think, that very many members who voted for the bill also doubted the power of Congress to pass it because they voted for the amendment by which that power was to be conferred. At all events, acting for myself and upon my own conviction on this subject, I did not vote for the bill when it was first passed, and when it came back to us from the President with his objections I voted against it. And now, although that bill became a law and is now upon our statute-book, it is again proposed so to amend the Constitution as to confer upon Congress the power to pass it.

Now, sir, I have at all times declared myself heartily in favor of the main object which that bill was intended to secure. I was in favor of securing an equality of rights to all citizens of the United States, and of all persons within their jurisdiction; all I asked was that it should be done by the exercise of powers conferred upon Congress by the Constitution. And so believing, I shall vote very cheerfully for this proposed amendment to the Constitution, which I trust may be ratified by States enough to make it part of the fundamental law.

The second amendment which is proposed to the Constitution relates to the basis of representation. That has also been already before this House for its action, and I have always declared myself in favor of the object it seeks to accomplish. As I remarked on a previous occasion, I do not think the South ought to gain a large increase of political power in the councils of the nation from the fact of their having rebelled, as they will do if the basis of representation remains unchanged. But when it was presented before it came in a form which recognized by implication the right, of every State to disfranchise a portion of its citizens on account of race, color, or previous condition of servitude, and provided that whenever any portion of any race should be thus disfranchised by any State, the whole of that race within that State should be excluded from enumeration in fixing the basis of representation. As the gentleman from Pennsylvania [Mr. STEVENS] said yesterday, it provided that "if a single one of the injured race was excluded from the right of suffrage, the State should forfeit the right to have any of

them represented;" and he added that he preferred it on that account. Well, sir, I did not. When it was presented before, the distinguished gentleman from Ohio [Mr. SCHENCK] made a very powerful argument against it. He showed that it tended directly to discourage every southern State from preparing its colored population for enfranchisement; that it deprived them of all inducement for their gradual admission to the right of suffrage, inasmuch as it exacted universal suffrage as the only condition upon which they should be counted in the basis of representation at all. I thought that argument entitled to great weight. I have never yet heard it answered. The gentleman from Ohio converted me to that view of the subject, and although he relinquished or waived it himself, I could not. I voted against a proposition which seemed to me so unjust and so injurious, not only to the whites of the southern States, but to the colored race itself. Well, sir, that amendment was rejected in the Senate, and the proposition, as embodied in the committee's report, comes before us in a very different form. It is now proposed to base representation upon suffrage, upon the number of voters, instead of upon the aggregate population in every State of the Union. And as I believe that to be essentially just, and likely to remedy the unequal representation of which complaint is so justly made, I shall give it my vote.

The third amendment embodied in this report is of an entirely different character. It provides that until the year 1870 all persons within the States lately in rebellion who "voluntarily adhered to the rebellion and gave it aid and comfort" shall be "excluded from the right of voting for members of Congress and for electors of President and Vice President of the United States."

Now, the first thing that strikes my attention in this is, that this amendment recognizes these States as States, and as States within the Union. How else, upon what other ground, are they authorized to be represented at all? The amendment does not confer upon them any right of representation. It does not confer upon their people any right of voting. It recognizes their right to representation. It recognizes the general right of suffrage as belonging to the people of these States. It simply limits that right thus recognized as existing. It excludes a portion of the people from exercising that right of suffrage which in the absence of such exclusion they would possess. Now, this discards entirely the doctrine that these States are Territories, the doctrine that they are conquered provinces, and that their people are alien enemies, out of the Union and without rights of any kind. And so far it has my hearty approbation.

But, sir, it proposes to exclude the great body of the people of those States from the exercise of the right of suffrage in regard to Federal officers. The gentleman from Pennsylvania, [Mr. BROOMALL,] in his very ingenious argument this morning, attempted to show that it would not exclude more than one in twelve of the voters in the southern States. But it seems to me idle to enter into such calculations, which depend on a series of estimates, each one of which cannot be anything more than a wild and random guess. I take it that we all know perfectly well that the great masses of the southern people "voluntarily adhered to the insurrection;" not at the outset, not as being originally in favor of it, but during its progress, sooner or later, they voluntarily gave in their adhesion to it, and gave it aid and comfort. They did not all join the army. They did not go into the field, but they did, at different times, from various motives and in various ways, give it aid and comfort.

Well, sir, that would exclude the great body of the people of those States under this amendment from exercising the right of suffrage. It is proposed to permit those only who did not at any time nor in any way thus adhere to the insurrection to vote for members of Congress and for presidential electors. I do not think they would number more than one tenth of the whole population. But even if they should number one eighth or one fifth they would still constitute but a very small portion of the people to be clothed with the exclusive powers of government. They would still constitute a government oligarchical and not republican in form. Yesterday the chairman of the joint committee on reconstruction, [Mr. STEVENS,] in his forcible remarks introducing this report, took ground against admitting the members-elect from Tennessee and Arkansas because they do not represent their constituents. "Do not tell me," said he, "that there are loyal representatives waiting for admission; until their States are loyal they can have no standing here, for they would merely misrepresent their constituents." And yet he proposes that we shall allow one fifth, one eighth, or one tenth, as the case may be, of the people of these southern States to elect members from those States to hold seats upon this floor. Now, would not men thus elected in the most emphatic sense misrepresent their constituents? How can the gentleman from Pennsylvania favor such a proposition as this, which is certain to secure members who will not truly represent their States, when he refuses admission to the loyal delegation from Tennessee? By what process of reasoning

can he reconcile the admission of members in the one ease, while he denies it so obstinately and scornfully in the other? It is true this provision is temporary; but the effect of it while it lasts must be to plant seeds of discontent

and dissension in the southern States which will survive by scores of years the immediate cause out of which they grew.

The gentleman from Maine [Mr. BLAINE] yesterday made what seemed to me to be a very strong point—that this disfranchisement of the large body of the southern people would run counter to the terms of the amnesty proclamation of President Lincoln, which restored all but certain classes to their former rights. I think there is great force in that objection. But however this may be as a point of technical construction—and I shall not canvass it in that light—there is certainly great force in this objection, that this provision would be a departure, a retraction from the assurances given all through this war, by acts and resolutions of Congress and by proclamations of the President. Every declaration from any department of the Government conveyed to the South and to the whole country the assurance that the war was waged for the sole purpose of suppressing the rebellion, and that when it was over all the States would be restored to the Union in full possession of all their rights and on a footing of equality with the other States. I know it may be said that we were there in perplexity and in peril, and that it was essential to the harmony of public sentiment and to the vigorous prosecution of the war that these declarations and pledges should be made. I know, too, how general is the truth that "ease will retract vows made in pain." But it is not a pleasing spectacle to see a great nation like this shrinking from the fulfillment of pledges under which it carried on the war, shrinking from the assurances it has given to the whole country, that upon the termination of the war the authority of the Constitution and the rights of the States should be restored. We should be at least as jealous of our honor now as we were of our safety then.

There is another objection which perhaps may not be entitled to much weight, but is worth consideration. This proposition to exclude the mass of the southern people from voting until 1870 exposes those who advocate and press it, it exposes the Union party to the suspicion, renders that party obnoxious to the charge of seeking to amend the Constitution for the purpose of influencing and controlling the presidential election of 1868. I make no such charge, but I know it will be made. Our vigilant opponents will not omit so tempting an opportunity to trace our action to motives of partisanship rather than patriotism. And I would not like to be put in a position where I shall be compelled to concede the charge, or where facts can be brought forward that would even seem to sustain it. It is quite true that the gentleman from Pennsylvania [Mr. STEVENS] accepted what he took to be a suggestion on my part the other day, that General Grant might be the candidate of the Union party for the Presidency in 1868, with great alacrity; and the eagerness with which he responded to that suggestion gave me the most comforting assurance that we shall have no dissensions upon that subject when the time shall come. I do not think it necessary, therefore, to insert such an amendment as this in the Constitution in order to secure the election of General Grant, if he should be presented as the Union candidate or by the country at large, without regard to party, as is by no means impossible. For wherever you find men who appreciate courage, skill, and patriotism in the field, magnanimity in the hour of victory, and wise moderation in political councils, there you will find men who will appreciate that illustrious commander as a candidate for any office which the American people may have to bestow. But upon these points I will not dwell.

I now come to another objection, which to my mind seems fatal to this amendment. This section seems to me to have been inserted for the express purpose of preventing the adoption by the southern States of any of the amendments proposed to the Constitution. I will not say that this was the motive of the committee in reporting it, but that, I think, is the result which its adoption by Congress will secure. The adoption of all the proposed amendments, this one included, by each of the southern States, is made in the bill reported by the committee a condition essential to their admission to representation in Congress. Now, the amendments are to be adopted by the Legislatures of the several States. The Legislatures are elected by all the people—those who have voluntarily adhered to the insurrection as well as those who have not—for the gentleman from Pennsylvania [Mr. BROOMALL] laid special stress upon the fact that the people are still allowed full control of their State governments.

These Legislatures, thus elected, are expected to ratify all these amendments, to concede an equality of civil rights, to concede a great reduction of their political power in changing the basis of representation, to concede the repudiation of their debts and the denial of compensation for their slaves; and for what consideration? What do we offer them in return for all these concessions? The right to be represented on this floor, provided they will also consent not to vote for the men who are to represent them! Nay more, that they shall accept as the Representatives whom they thus get the right of having here men elected by a small minority of their people who are supposed and conceded to be hostile to them in political sentiment, and against whom they have been waging a bitter war! We offer them, in exchange for all these renunciations of political power and of material advantage, the privilege of being misrepresented in Congress by men in whose election they had no voice or vote, and with whose past

political action and present political sentiments they have no sympathy whatever.

Why, sir, this not only "brooks the word of promise to the hope," it does not even "keep it to the ear." It is not merely a sham, it is a mockery. The very price by which we seek to induce their assent to these amendments, we snatch away from their hands the moment that assent is secured. Is there any man here who can so far delude himself as to suppose for a moment that the people of the southern States will accede to any such scheme as this? There is not one chance in ten thousand of their doing it.

Representation ceases to be of the slightest value to them under such conditions. They will not seek it or ask for it. They will infinitely prefer to take the chances of change in the political councils of the nation, to await the election of a Congress more propitious to their claims, especially under the comforting assurance which the gentleman from Pennsylvania [Mr. STEVENS] gave them some two months ago, when he said frankly that "it is of no importance by whom or when or how reconstruction is effected, for in three short years this whole Government will be in the hands of the late rebels and their northern allies." They will readily wait "three short years" for representation rather than purchase the mockery of it we offer them at such a price.

The gentleman from Ohio, [Mr. SCHENCK,] in vindicating the policy of this exclusion of the southern people from the right of suffrage, insisted that it was necessary as a means of discipline; that they are not yet in a proper frame of mind to take part in the affairs of government; that they are at heart still unfriendly and hostile to our authority and institutions; and that we must treat, them as parents do unruly children, that we must flog them for their offenses and then exclude them from the family table or shut them up in a closet until they come to a better and more submissive mood. Well, sir, this might answer if the eight million people with whom we are dealing could consent to be treated as children, and to regard us here in Congress as standing *in loco parentis* toward them. They might in that case submit tamely to the chastisement we propose, and possibly profit by it. But they are not children. They are men, men tenacious of their rights, jealous of their position, brave, and proud of their bravery, of hot and rebellious tempers, and not at all likely to be subdued in spirit or won to our love by such discipline as the gentleman from Ohio proposes to inflict. We have chastised them already. We have defeated their hostility against the Government. And now what remains? They are to be our fellow-citizens. They must form part of the people of our country. They are to take part, sooner or later, in our Government unless we intend to discard the fundamental principle of that Government, the right of the people to govern themselves. And we cannot afford to have them, or to make them, sullen, discontented, rebellious in temper and in purpose, even if they are submissive in act.

We have nothing to do with the sickly sentimentality referred to by the gentleman from Pennsylvania [Mr. STEVENS] yesterday. Our object is not to deal in mercy toward them. We are to deal wisely—for their good and for our own. We are to make them friends, because we cannot afford to make or to keep them enemies. How shall we do this best? By what policy can it be best effected? By exclusion, by coercion, by hostile distrust? Can we coerce friendly feeling on the part of a hostile people? Has it ever been done? I would like the reader of history on this floor to point me to an instance in the records of any nation where great communities once disaffected have been brought back to friendly relations and feelings of kindly regard by such measures as are here proposed. Has Ireland been thus appeased? Has Poland? Has Hungary? Has Venice?

Why, sir, if history teaches anything, if any principle is established by the concurrent annals of all nations and all ages, it is that sentiment cannot be coerced; that opinions, even, cannot be controlled by force; and that with any people fit to be free or to be the country-men of men who are free, all such efforts defeat themselves and intensify and perpetuate the hostilities sought to be overcome. Ireland offers us a signal example of this, and I am amazed that members upon this floor can shut their eyes or close their minds to the lessons which her sad history teaches. England, for her harsh dealings with that unhappy land hundreds of years ago, is paying the penalty to-day and will for all time to come. By mistakes in policy precisely such in kind as we are making now, England, hundreds of years ago, planted in Ireland the seeds of that disaffection which, in spite of all her attempts to undo the wrong, in spite of abundant legislation in redress of grievances, and for the good of Ireland, from time to time bursts out into feeble but bitter insurrection, and which to-day blooms into that shadowy phenomenon of Fenianism, which terrifies one continent and puzzles and poisons the other.

No, sir, this is not the way to deal with disaffected States. I have no sympathy with those in the southern States who have just emerged from rebellion. Never for an instant have I felt or shown the slightest toleration for their crime. From the first moment their purpose of rebellion was made apparent until the hour they laid down their arms, within my humble sphere and by the feeble means which were all I could command, I have demanded, urged, and waged the most vigorous and determined war that could be made upon them. That war has proved successful. The rebellion has been suppressed. Our mission now is of a different kind and must be fulfilled by

agencies of another sort.

These, sir, are my objections to the third of these five amendments. The other four commend themselves to my judgment and will receive my support.

RECONSTRUCTION—AGAIN.

Mr. McKEE. Mr. Speaker, in the short time allotted for this discussion it is not my purpose to go over the propositions embraced in the pending amendment to the Constitution. Nor do I regard it as necessary, at least so far as my own position is concerned, having already in this House voted for at least three of the propositions in substantially the same shape in which they are now presented. I desire more particularly to discuss the third section of this proposed amendment, as there seems to have been generated more opposition to this than any other, and it being a proposition I regard as one of the most vital of all.

It is, sir, perhaps as well to go back a little to look at the opposition and to examine into the record of this House. On the 14th of December last, after the meeting of the two Houses, a resolution was introduced into this House by the gentleman from Oregon [Mr. HENDERSON] in these words:

"Resolved, That treason is a crime and ought to be punished."

And on calling the yeas and nays not a solitary Representative in this House who answered to that call but voted in the affirmative, including every Democratic member, with the exception of four who were absent. What did that mean? Did this House then vote their sentiments, or did they not? Since that time, sir, from the Democratic side of the House I have not heard a word that would tend in the least to induce the country to believe they would carry out the resolution for which they then voted. On the contrary, the whole drift of their argument is that these men, having submitted, are now as loyal as those who fought on the side of the Government, and entitled to the same rights. Is this the manner in which they propose to punish treason? Is this the proposition for which we voted? It would have been better had the resolution read in this manner:

Resolved, That treason is a crime, and that traitors should be rewarded for its commission.

The course of this whole Democratic side of the House since the vote on the 14th of December has been in strict accordance with the proposition as I have read it; and I regret to say that even on the Republican side I find men to-day who are willing, aye pleading that these men having laid down their arms are now entitled to all the rights which we who stood by the flag of our country during the late struggle for our existence possess. They have set aside their own work, abandoned their own record. It is very fashionable in these days, I believe, to do that.

Perhaps we can gain nothing by going back to men's records, but I would ask gentlemen this question. They are well aware that by our laws treason is declared a crime, and a high penalty is affixed upon it. Now, sir, the simple question comes to us to-day, have we, the Representatives of the people of this great nation, moral courage enough to carry out that law, or will we turn our back upon those who sustained our country in the great struggle for its existence and say to the eighteen hundred thousand men who waged this war, "All your efforts to crush out treason amount to nothing; these traitors to-day are entitled to all the rights that you possess?" Sir, for one, I am tired of that sickly sentimentality.

It appears to me that in order to uphold the loyal people of this land something must be done by a law ingrafted into the Constitution to protect them in their loyalty. Look, if you please, at the States of Maryland, of West Virginia, of Tennessee, of Missouri, of Arkansas. Each one of these States during this struggle, or since its close, has passed laws by which they disfranchise forever those men who gave aid and encouragement to the rebellion.

Now, sir, the question comes up to-day. The committee on reconstruction report a basis for settlement. They report to this House a proposition which disfranchises these men who have gone into rebellion even for the short space of a little more than four years, and we find it opposed by men who have always been against treason.

That is the proposition. And if it is voted down, how do we go out to the country? The representatives of the nation here assembled say to those five States which have adopted a disfranchising qualification in regard to their citizens, "Your action is wrong. You should not pass such an act. These men who waged war against the Government and against you have as much right to vote as you who have been true to your flag." It is not encouraging loyalty; it is crushing out those men who alone were true during the war, and putting the control of the State governments in their hands. For this cause alone, if for no other, I should say, do not strike out the proposition.

But, sir, it is perhaps true that the carrying out of this law might meet with some difficulty. But we find, in the disturbed state of our country which has resulted from the effects of this great war, that we must meet difficulty in

all our efforts to restore peace, harmony, and quiet throughout the whole land. We are told that it is not fair nor just that the great mass should be disfranchised. Now, sir, in doing this we are but following the principles laid down by the lamented President Lincoln, His idea in regard to reconstruction was, if there were only one tenth of the people in any State who were loyal, as in Louisiana, that one tenth should reconstruct, rule, and control. And the idea was announced over and over again by his successor who to-day occupies the presidential chair.

Following out that great principle the people of Tennessee, one of the States declared to be in rebellion, organized a State government under the direction of President Lincoln and under the sanction of Andrew Johnson, then military governor of that State, and they have succeeded in enacting a law by which those who engaged in the rebellion are disfranchised and prohibited from exercising any of the rights of electors in the State which of right belong only to the loyal.

Now, sir, how do we hear this proposed amendment responded to by those who oppose it? We hear one of the gentlemen on this side of the House, from Ohio, [Mr. FINCK,] calling upon the people of the South to have independence of spirit enough to rise up and reject it with scorn. And, as has been said by the gentleman from New York to-day, no matter what may be said of these people we may say this for them, that they are not fools, and they are not going to accept it. The inference, then, may be that we are fools in proposing it.

Well, sir, if we are to judge by their actions for the last five years, I think we should not make up our opinion very rapidly that they have not acted very foolishly in some things at least. It appears to me that they exhibited very little wisdom in going into the rebellion; it appears to me that they exhibited very little wisdom in its conduct; it appears to me that they exhibited no wisdom whatever in bringing on a great war; for if they had looked into the subject at all, they might have been satisfied that they could not destroy this Government. And they still show a want of wisdom, when, at the end of the war, having been crushed and having agreed to accept the issues of the war, to submit to the propositions by which we propose to reconstruct the Government, under the influence of the powers at Washington they have come to the conclusion that they are to be again trusted with the management of the affairs of this nation and are to be the rulers here. The sequel will show that they are misled and deceived.

Listen to what the Memphis Avalanche, one of the reconstructed organs of the South, says in reference to a recent law passed by the Legislature of Tennessee, and then you will be prepared to judge whether these people are ready to accept our terms or not. I read from the Memphis Avalanche of the 5th of the present month:

"The despotic, infamous, and cowardly franchise bill has become what the regime at Nashville call a law. That is, it has passed a so-called Senate and a so-called House at Nashville, or, in other words, it has received the sanction of a gang of legislative loafers who exist at the public expense at the capital of the State, and call themselves the Legislature of Tennessee."

Such is the language used by the copper-head press all over the country in regard to the Congress which sits here to-day. But I quote further:

"It becomes the good people of Tennessee"—

I want the House to bear in mind that when this writer refers to the "good people of Tennessee," he refers to men who have been engaged in this wicked and infamous attempt to destroy our Government. He goes on:

"It becomes the good people of Tennessee to prepare at once to dispute the further encroachment upon their rights by the wretched despotism now in power at Nashville. Let the State have restored to it the constitution which existed before the war, and which has not, up to this time, been properly, legally, or constitutionally supplanted by any other organic system. What now professes to be the constitution of Tennessee is but an assumption, the creature of a mere mob, a dirty thing, having a dirty emanation, to which a brave and chivalric people have, because of their misfortunes, been compelled to submit, but which they loathe and despise from the utmost recesses of their noble but broken hearts."

This is the class of men to whom we are called upon to-day to extend our sympathies, and to place upon an equal footing with those who have never faltered in their devotion to the Union. But I read on:

"The time has now come when further endurance will entail upon the people additional and more humiliating oppressions."

Hear the language of these men, who to-day we are called upon to enfranchise, and to place upon an equal footing with ourselves. I desire to make one other quotation to show the spirit which animates these reconstructed rebels. I read from the Louisville Journal—a paper published in the interests of the "Conservative-Johnson-Union party"—on the 2d day of May, 1866, describing the convention of reconstructed rebels and Democrats for the State of Kentucky, held in the city of Louisville the preceding day. That paper uses this language:

"We assure the people of Kentucky that the peace, harmony, and safety of the State are more

seriously imperiled now than they have been since the ruthless hordes of Buckner and Bragg were trampling down our soil. The same men whose treachery to the Commonwealth and the nation involved the country in civil war five years ago; the same men who robbed and encouraged the robbing of our banks, the destroying our railroad bridges, the firing of the dwellings of our citizens, and sought to establish rebel provisional governments over our people, by which to coerce them into the whirlpool of treason, are perfecting a political organization in the State for the purpose of placing her political power exclusively in the hands of men who, having been whipped at their own game of powder and ball, are now seeking to use the ballot for the achievement of their revengeful political schemes."

I ask the Representatives of the people to-day if they are willing to turn over the loyal men in these States, who have passed these laws, to the tender mercies of men like these? That is the question we have to meet now on this proposition. There may be some objections to it; but if we can get nothing better it is a good thing to go before the people of the country with; and the people will answer in tones that will be gratifying to the heart of every loyal man who votes for it here.

But, sir, in order to obviate the objections that are made to this third section, I propose to amend the motion made yesterday by the gentleman from Ohio, [Mr. GARFIELD,] to recommit the joint resolution with instructions to the committee to strike out the third section, by substituting therefor the following:

Recommit with instructions to strike out the third section, and insert in lieu thereof the following:

All persons who voluntarily adhered to the late insurrection, giving aid and comfort to the so-called southern confederacy, are forever excluded from holding any office of trust or profit under the Government of the United States.

That will obviate the objection that it would

be impracticable to enforce the provision depriving the men who were engaged in the rebellion of the right of voting. It will provide that they shall vote for none but those who have been loyal. The loyal men will be encouraged, because the nation will say to them, "You alone, who have remained true, shall hold office," following out the resolution of

the House that "treason is a crime, and ought to be punished." As nobody expects now that any traitors will be hanged (which is the punishment provided by law) let us cut off their heads politically, and say to them, you can never hold office under this Government.

By this means we will affix the brand of treason upon the traitor's brow; and there I would have it remain until the snows of winter covered their graves.

In my opinion, we are compelled to do one of three things: we are compelled to adopt something of this kind to prohibit these men, who with treacherous hearts sought the very life of the nation, from again seizing the offices of the Federal Government, by excluding them forever from office; or we are to turn the loyal men in all the border States as well as throughout the whole South over into the hands of the traitors, with the probability that the nation itself will follow in the same wake. The second follows from the refusal to do the first; the first, in my opinion, being the only salvation for the Union and protection of Union men. There is one other course which might have the effect of saving the nation with the Union men of the South. That is, if you will enfranchise these traitors, then enfranchise all men; and in that way the vote of the loyal man may counteract the vote of the traitor. Now, so far as I am concerned, I have not arrived at the point yet when I can believe that all men should be enfranchised. But if I am asked which I would the sooner trust, I would answer that I prefer to trust the meanest black man with a loyal heart who ever wore the chains of slavery to the most intelligent traitor who has waged war against my country.

But this House is not prepared to enfranchise all men; the nation, perhaps, is not prepared for it to-day; the colored race are not prepared for it, probably, and I am sure the rebels are unfit for it; and as Congress has not the moral courage to vote for it, then put in this provision which cuts off the traitor from all political power in the nation, and then we have secured to the loyal men that control which they so richly deserve. We will then have rewarded them for their devotion, and punished treason as it deserves to be punished.

Let me ask gentlemen here, why do you want these men to vote? Why are you clamorous for the support of men who have been engaged in treason, and whose hands are yet reeking with the blood of more than three hundred thousand loyal slain? Simply that you may turn out of power the great Union party who alone have upheld the Government in this grand and glorious struggle for liberty; simply that you may hand the reins of Government over to the bands of that sickly, pale, copperhead party, which was only the left wing of Jeff Davis's

army during the late war. That is why you want to have them vote, and such would be the result of the policy if adopted. You do not want to have traitors punished. Why? Because you want their aid; you desire that they shall help you, just as you were willing to help them during the war which has just closed.

You talk about this question of State rights. We thought the war had killed that dogma. But you are now attempting to bring it to life again. And if you have power enough to do it with the aid of the votes of traitors you are willing to summon them here to these Halls and give them a share in our deliberations. Now, for one, I want none of it. I desire that the loyal alone shall rule the country which they alone have saved. I desire that the brave and war-worn veteran shall be rewarded for his toil and privation. I desire that the widows and orphans of the slain soldiers of the Republic shall be spared the insult of having traitors make laws for them. I desire that the loyal heart of the nation shall continue in power the great party which sustained our armies in the field, and I desire that that party shall not be prevented from rewarding the heroes who survive with broken and maimed limbs and feeble bodies; shall not be prevented from dealing out pensions and bounties to the orphans of the slain soldiers of the Republic.

Permit these men to come back and assume their places here again, and I tell you to-day that having obtained equality for themselves you must go a little further and place their widows and their orphans upon our pension list, or they will not vote for any pension to yours. I want to prevent all that. And when the charge comes to me that I desire these propositions carried out in order to perpetuate the strength of a political party, I reply I do desire that party still to rule this land, because they alone having been loyal, they alone should rule.

Now, in regard to the section which forbids the payment of the rebel debt or compensation for slaves that have been emancipated, I most heartily support it. Having already put myself upon the record in favor of such a proposition, it is not necessary I should now say anything in regard to it. In order to secure the payment of the national debt, in order to prevent the payment of compensation for slaves who have become freemen, and the assumption of the rebel debt, the control of this Government must be by the loyal men of the land.

Mr. Speaker, I now yield to the gentleman from Iowa, [Mr. WILLSON,] if he desires to occupy the few minutes I have remaining.

The SPEAKER. The time of the gentleman from Kentucky [Mr. McKEE] will expire in four minutes.

Mr. WILSON, of Iowa. Mr. Speaker, I desired, when the gentleman from New York [Mr. RAYMOND] was speaking, to interrupt him, in order that I might understand fully the position in which he placed himself concerning his vote on the civil rights bill. I understood him to say that he voted against that bill because, as he believed, Congress had not the power, under the Constitution, to pass the bill, and that it would require such an amendment as is now proposed to clothe us with the power to pass such a measure. I could not at the time harmonize that in my mind with the record of the gentleman during this Congress relative to the principle involved in the civil rights bill.

The first section of that bill embodies its essential and vital principle. All the other sections provide merely for the enforcement of the principle embraced in the first Section, which was simply a declaration that all persons without distinction of race or color should enjoy in all of the States and Territories civil rights and immunities. Now, sir, the gentleman himself introduced early in the session a bill, the second section of which provides as follows:

"That all persons born, or hereafter to be born, within the limits and under the jurisdiction of the United States, shall be deemed and considered and are hereby declared, to be citizens of the United States, and entitled to all rights and privileges as such."

The first section proposes to amend our naturalization laws by striking out the word "white;" and the bill itself is intended to confer upon negroes and all other persons born within the United States, without distinction of color, the rights of citizens of the United States.

After that bill had been introduced by the gentleman from New York he made a speech, in which I find one of the propositions which he laid down as proper to be enforced by this Congress against the people of the southern States was in this language:

"I think, in the third place, we should provide by law for giving to the freedmen of the South all the rights of citizens, in courts of law and elsewhere."

Now, he did not mean that such provision should be made by a constitutional amendment; for in his fifth proposition he goes on to say:

"Fifth, I would make such amendments to the Constitution as may seem wise to Congress and the States, acting freely and without coercion."

So that his third proposition had no reference to this. And in fact he precludes any such construction by using

the term "law."

He says:

"We should provide by law for giving to the freedmen of the South all the rights of citizens, in courts of law and elsewhere."

Now, sir, that proposition of the gentleman is broader than the provision in the civil rights bill. It involves the entire principle; and if we give a reasonable construction to the term "elsewhere," we may include in that the jury-box and the ballot-box.

It does seem to me, sir, that the explanation given by the gentleman for his vote against the civil rights bill cannot be supported upon this record. If the gentleman will say that he voted against that bill because of the sections following the first, that may raise a different question

The SPEAKER. The half hour of the gentleman from Kentucky [Mr. McKEE] has expired.

Mr. ELDRIDGE obtained the floor.

Mr. RAYMOND. I will inquire of the gentleman from Wisconsin [Mr. ELDRIDGE] whether he will not allow the gentleman from Iowa to finish what he has to say and allow me to reply. It need not come out of the gentleman's time. Let it be regarded as an independent portion of the debate.

Mr. ELDRIDGE. I will consent to that if the House will.

The SPEAKER. If the gentleman from Wisconsin does not claim the floor now, the Chair will recognize the gentleman from Iowa.

Mr. ROGERS. My information is that this bill is to be brought to a vote to-morrow. There are a number of gentlemen who wish to speak; and I suppose it is desirable to give as many an opportunity as possible.

The SPEAKER. The Chair understands that the bill is to be brought to a vote tomorrow; and there are some thirty gentlemen who desire to speak.

Mr. ROGERS. I do not think it fair that time should be taken in this way. I do not object myself; but I think as many members as possible should be allowed an opportunity to speak.

Mr. RAYMOND. I think that when one gentleman makes a personal point against another an opportunity should be allowed for a reply.

Mr. ELDRIDGE. I have no objection to yielding to the gentlemen if I can have the floor as soon as this personal question is disposed of. But I do not wish the time to come out of my thirty minutes.

Mr. HIGBY. I believe that we adopted, a day or two ago, a stringent rule as to the allotment of time in this debate; and I shall object to any departure from that rule.

Mr. WILSON, of Iowa. I have said nearly all I intended to say.

Mr. HIGBY. I do not withdraw my objection. Gentlemen will have an opportunity to be heard before this debate is closed. I have no idea of closing this debate to-morrow. I do not believe in it.

Mr. ROGERS. Nor do I.

The SPEAKER. The gentleman from Wisconsin will proceed.

Mr. ELDRIDGE. Mr. Speaker, I do not intend to make an argument on the merits of this joint resolution on the present occasion. On the 25th of January last I gave my views and made such arguments as occurred to me against a similar proposition to one of these then reported from the joint committee of fifteen as an amendment to the Constitution. I have not had occasion to change the views I then expressed. I still believe, as I did then, that we ought not to amend the Constitution so as to provide a fundamental law for a people not represented in the action on that amendment. I believe now as I did then, that all the States formerly composing the Union were then and are now States of the Union. I do not believe the rebellion was successful in any manner to accomplish seces-

sion. I do not believe it had the effect to take away any of the rights of the loyal citizens of any of the confederate States, but that our success was the preservation of all their rights under the Constitution in the Union.

But, Mr. Speaker, I am opposed to the re-committal of this joint resolution, and I believe that is the pending question before the House. I do not wish to express any sentiment of disrespect for the individuals composing that committee. I entertain for them entire respect as individuals, but I do aver that that committee has utterly and entirely failed to perform its duty, and has disappointed the country in the action it has taken. That committee today stands, in my judgment, between the representatives of the late so-called confederate States and the resumption of their proper duties and functions in the Union and in this Congress.

That committee, sir, was raised and organized in the spirit of party. The resolution by which it was raised did not originate in the House of Representatives, but in a party caucus outside of this Hall, and for party purposes.

And the committee in what it has done has acted in the interest of party. It has done perhaps what that caucus and those composing it expected.

What has it done? It has deliberated for five months. It was by the resolution creating it organized for a special and specific purpose, distinctly and clearly expressed in the resolution, and I allege that after having performed that duty as required by the resolution, it ought to have reported and then been discharged.

The resolution organizing the committee is as follows:

"Resolved by the Senate and Louse of Representatives in Congress assembled, That a joint committee of fifteen members shall be appointed, nine of whom shall be members of the House and six of the Senate, who shall inquire into the condition of the States which formed the so-called confederate States of America, and report whether they or any of them are entitled to be represented in either House of Congress, with leave to report at tiny time, by bill or otherwise; and until such report shall have been made and finally acted upon by Congress, no member shall be received into either House from any of the said so-called confederate States; and all papers relating to the representatives of the said States shall be referred to the said committee without debate."

Mr. Speaker, it appears that the duties of that committee were simply to inquire "whether the so-called confederate States of America are entitled to be represented in the two Houses of Congress." I ask, how have they discharged that duty? Have they reported to the House upon the subject referred to them, that any one of those States is or is not entitled to representation? Have they inquired, and if they have inquired, what information have they given us on that subject? Nothing, absolutely nothing. Their sessions have been secret; their acts and doings have been kept from the public and from this House. And when they have reported, it has been only a mass of testimony I presume no Representative upon this floor has had time or patience or opportunity to read, if he has had the inclination. It has not yet been printed. It has not been laid before the House yet for any available purpose. There is no opportunity for us to judge what is the nature and character of that testimony. The Public Printer has not been able to print it before we are called upon to act upon measures said to be shown to be a necessity by it.

The committee report no facts whatever and give us no conclusion. They simple report amendments to the Constitution. Was that the purpose for which the committee was organized? Was it to change the fundamental law of the land under which we of the loyal States assembled here? Was that the duty with which the committee was charged? Were they to inquire and report an entire change of the fundamental law of the nation which would destroy the States and create an empire? I say they were charged with no such duty. The resolution cannot fairly be construed as giving to the committee any such power, any such jurisdiction.

What, then, has been accomplished? Do we understand from the committee to-day any better the situation of these States than we did at the beginning of this Congress? Have they enlightened us upon the question whether those States are entitled to representation in Congress? I say, as I said before, the committee have not only stood in the way of the representation of those States in this Congress, but they have stood in the way of proper information to this House. If the members from the southern States applying for admission at the beginning of the session had been admitted to seats on the floor of Congress, we should have gained some information. They would have been able to give us official information of the wants and necessities of those States in their character as Representatives, upon their honor as such. But this committee has not deigned to give us a single fact, not even their conclusion upon the facts, if perchance there are facts, as I suppose there are, in that testimony which they have taken.

I ask, then, and I ask sincerely, has the committee entitled itself to have this matter recommitted to it for further action, and for what purpose, what action, is the recommitment to be made? Is it that the committee may go on *ad infinitum* to take testimony of such persons as they may see fit to be used in the coming election, without giving us the benefit of their conclusions, of their consultations, and of their examinations? When this committee was at first raised it was professedly for the purpose of aiding in the restoration of the Union, and providing for the representation of the absent States, but it has become only a partisan machine in the interest of the Republican party. Its effort and purpose, if we may judge from the reports which it has made, have been, not to furnish a way of restoration, not to ascertain if they were entitled to representation, but to prevent or delay indefinitely both representation and restoration. Every report that has been made has shown upon its face the evidence of a determination to delay, if not to destroy. And the chairman of the committee, in his speech of yesterday at the opening of this debate, said that the southern representatives must not be permitted to come in until we will it.

The committee stands, therefore, resisting the restoration of this Union, and I hope that no further business will be referred to it. It has rendered itself unworthy of the high duty with which it was charged by the resolution which I have read. It has not sought to give us information. It has not sought to furnish us with the evidence

whether these States were fit for or entitled to representation. But it is reporting measure after measure that must cause not only delay during the present session of Congress, but delay even beyond this Congress. To adopt the remark of the gentleman from Pennsylvania [Mr. BOYER] the committee has been seeking how not to restore rather than to restore the Union. Every obstruction, every obstacle which they could contrive, they have placed in the way of restoration.

Now, is it proposed to restore the Union by adopting this amendment to the Constitution? I do not believe that the proposition looks to any such purpose; it has no such object. But the committee, seeing the hand-writing on the wall, seeing the public sentiment of the country in favor of restoration, seeing the disrepute into which it was falling, seeing the character which it had attained before the country, sought to appease and allay that popular sentiment by a compromise in regard to these questions of difference among themselves.

Why is it that the gentleman from Pennsylvania [Mr. STEVENS] gives up universal suffrage? Why is it that he and other gentlemen give up universal confiscation? Why is it that other gentlemen give up universal butchery of that people? It is a compromise of what they call principle for the purpose of saving their party in the next fall election.

The gentleman from Ohio [Mr. GARFIELD] said yesterday that they must strike out the third section or the people would be suspicious that this thing was done in the interest of party. Suspicious! Does not the proposed amendment carry on its face the evidence that it originated in the interest of party? It is reported and speeches are made upon it in the interest of party and for party purposes..

The chairman of the committee [Mr. STEVENS] tells us that these States are not necessary to be counted in the submission of this constitutional amendment. He scouts and scorns the idea that they are entitled to the right of rejecting or approving it. And here is another inconsistency on the face of the resolution itself, which in the preamble reads, "that the following article be proposed to the Legislatures of the several States as an amendment to the Constitution." These States are recognized in the resolution itself; every section, line, and sentence recognizes them as States in the Union. The word "State" is used in the first section, which says, "nor shall any State deprive any person of life, liberty, or property without due process of law." That has reference only to the southern States, for there was never any necessity to apply it to the northern States.

So in the second section the word "State" is used in the same sense, and also in the third section, admitted on all hands to apply not to the northern but to the southern States exclusively. And yet the gentleman from Pennsylvania [Mr. STEVENS] tells us that the southern States are not to be counted in adopting or ejecting this proposed amendment.

The second section of the joint resolution is also inconsistent with the action of the committee. They reported the bill known as the "civil rights bill," which has become a law. What necessity is there, then, for this amendment to the Constitution if that bill was constitutional at the time of its passage? Is it not an admission that it was not? Ay, but the gentleman from Pennsylvania gives us here another party reason. He tells us that the time may come when the Democrats will get possession of Congress, and if you depend upon a mere act of Congress, that it will be repealed; and he seeks to evade the popular will and to thwart the popular desire by placing in the Constitution now, while a portion of the States are unrepresented, an amendment to the Constitution, so that the people cannot have their way about it. This is of itself an admission that the whole scheme is in the interest of party alone, to preserve and perpetuate the party idea of this Republican disunion party.

But there is one thing about this resolution which is most remarkable if those eleven States are out of this Union, and it is this: that notwithstanding the proposition here to amend the Constitution in three particulars there is not yet any plan or proposition whatever reported by this committee for the restoration of this Union, or for those States to be represented in Congress. If the gentleman from Pennsylvania is right, and these eleven States are still out of the Union, adopt this amendment without their voice being heard, if you please, adopt it by the vote of nineteen States, and still these States, according to the gentleman's theory, will be out of the Union. Where, then, is your reconstruction, where your restoration in this joint resolution? Where has the committee shown any disposition, any desire for a restoration of the Union? Have they up till to-day reported any measure whereby a restoration of the Union is to be accomplished, whereby these States are ever to be restored and recognized as in the Union? How, under the theory of the gentleman that they are not to be counted or considered because out of the Union, are they ever under this measure to become members of this Union? If they are not now members will the adoption of this amendment to the Constitution make them members of this Union? Certainly not. They are no more in the Union then or entitled to representation in Congress then than now.

Here, then, is another gross inconsistency, showing the purpose and the object of this

measure. The third section is admitted even by the friends of the other two to carry upon its face the purpose of disfranchising the people of these eleven States and preventing them from taking part in the representation of this country. It is said by the gentleman from Ohio that if that section is not stricken out the people will come to the conclusion that this is a party measure. Sir, I have said no one can doubt it in the light of the history of this committee. It was organized in a party caucus. The resolution authorizing it was brought into the House by the man selected to do it by that caucus. It was presented to the House and supported solely by the caucus party; and immediately everything brought into the House having relation to the representation of the southern States in this Congress was consigned without debate to this vortex of ruin, of destruction, and of disunion. We have therefore been able to gain no information from any source on the subject of reconstruction or restoration or representation of those States.

The resolution may have been differently intended; but from its face no one can come to the conclusion that it intended anything more than that the committee should be authorized to inquire into the fact as to whether these States were legally and constitutionally entitled to be represented in either House of Congress: and yet the committee, arrogating to themselves all power upon this subject, have repeatedly reported amendments to the Constitution without giving us one fact or one reason for it, or any information as to when our troubles will be ended and the Union restored.

The people of this country, as I remarked in the beginning, are dissatisfied with that committee. It has disappointed the country. Go to-day, if you dare, and submit to the people of the United States the question whether that committee should longer be intrusted with this subject, and what do you think the vote would be? I tell you that it would be ten to one that the committee had disappointed the expectations of the country; that it should be discharged; that its duties were ended; that it had been a failure; that it had stood in the way of restoration and peace.

I tell you further that the people of this country demand the present, immediate restoration of this Union. And you will find, when the elections come around again, that they will speak in thunder tones to you politicians. You cannot compromise with them by surrendering principle for mere expediency, for mere party purposes. You will have to face the music, for the people will demand it of you. They have struggled long and ardently for the Union; they have sacrificed lives and treasure for the Union; they have been ardently devoted to the Union, and they will not surrender it for party purposes; they will not consent to keep the people of the southern States in bondage, such as Ireland has suffered so long, for the mere purpose of retaining a party in power.

I do not wonder that the gentleman from Pennsylvania [Mr. STEVENS] prophesied the time as not being more than three or four years distant when the people will place in power men who will respect the Constitution, who will respect the Union and the sacrifices that have been made for it, and who are willing to restore, preserve, and perpetuate that Union.

Mr. WINDOM. Will the gentleman from Wisconsin [Mr. ELDRIDGE] yield to me a moment, for a question?

Mr. ELDRIDGE. Certainly, for a question.

Mr. WINDOM. I desire to ask the gentleman, as he has spoken of the Democracy of his district, whether his home organ, the Fond-du-Lac Press, represents the Democracy of the State of Wisconsin.

Mr. ELDRIDGE. It does not. There is no paper on earth which represents the Democracy of this country.

Mr. WINDOM. Will the gentleman allow me to send to the Clerk's desk, to have read, an extract from that paper?

Mr. ELDRIDGE. No, sir.

Mr. WINDOM. Will the gentleman allow me to read half a dozen lines from his home organ?

Mr. ELDRIDGE. No, sir, because I have already said that we do not recognize it or any other paper as the representative of the Democratic party. We recognize no one person as authorized to speak for the Democracy. We speak by our acts; we are for the Union and always have been, and do not propose to let you prevent a restoration of the Union if we can help it.

Mr. WINDOM. I will ask the gentleman if he, himself considers Jeff Davis a traitor. His home organ says he is not.

Mr. ELDRIDGE. You work it in in that way, do you? [Laughter.] Well, I will say that I think he is. So you see the organ, as you call it, and I do not always agree,

Mr. WINDOM. I did not know how that was.

Mr. ELDRIDGE. Now will the gentleman tell us whether he thinks that any one who seeks to prevent a restoration of the Union is a traitor?

Mr. WINDOM. In some certain circumstances I think he is.

Mr. ELDRIDGE. Well, "in some certain circumstances" I think he is, too. [Laughter.]

Mr. WINDOM. Will the gentleman allow me to read something from the papers in his own district?

Mr. ELDRIDGE. No, sir.

I believe, Mr. Speaker, I have said pretty much all I desired to say. Much is said for the purpose of prejudicing the public mind about the readmission of red-handed traitors into the councils of the nation, and the question often suggested as to whether we can become reconciled to them. Sir, the war is ended; peace has been agreed upon; and men who have been in arms have laid them down. There is an agreement that we will forgive them, and if the fraternal union of our fathers is ever restored we must. Do you expect that those people will ever become reconciled to you if you do not become reconciled to them? And can that ever take place if you talk as the gentleman from Kentucky [Mr. McKEE] has talked this afternoon? If you would hang them all; if you would crush them all; if you would hate them forever, do you think they can shake hands with you, and live upon terms of amity and friendship with you? You wonder that they are not instantly reconciled to you; you wonder that they do not at once forgive and forget the past. But who here of the prominent politicians of the Republican party has ever been able to forgive? You are the conquerors; you have triumphed. You can afford to be magnanimous. You can forgive without mortification. But can they do the same? Consider what they must suffer. I expect that it will be long years before these bloody days will be forgotten either in the North or in the South. But we must live together as one nation, as one people, and the sooner we can forget, and forgive the better; the happier, the more prosperous and happy shall we be as a nation.

I did hope that a better and a kindlier feeling was growing up in the North; but when I hear men talking about branding traitors and making them wear the brand upon their foreheads until the snows of winter shall lie upon their graves, such hatred, such malignity, it seems to me, will not only keep alive, but perpetuate forever, sentiments of alienation and hostility. The Union of our fathers was a Union of fraternal feeling and mutual interest, and we must restore that Union, or the duty resting upon us will not be performed. If you are unable to forgive and forget the past you cannot expect the people of the South to forget and become reconciled to you. They may have been wrong; they were wrong; but this fact does not change the nature of men. Human nature is the same everywhere. I am prepared to forgive, in the interest of country and Union. Upon no other condition are we promised forgiveness by divine authority.

Mr. BOUTWELL. Mr. Speaker, the gentleman from Wisconsin [Mr. ELDRIDGE] has made some remarks in derogation of the joint committee on reconstruction. I do not purpose to reply at length to those remarks. He has said that the action of the committee is a failure. We knew very well from the beginning that so far as he and his friends were concerned the labors of the committee would be a failure. He puts, however, in behalf, I suppose, of himself and his Democratic friends, one question which I feel bound to answer. He says, "The committee have not told us when our troubles"—meaning, I suppose, the troubles of himself and his Democratic friends—"will cease."

Mr. ELDRIDGE. Oh, no; the gentleman certainly misunderstood me. I meant the troubles which the Republicans themselves were making.

Mr. BOUTWELL. The troubles of the gentleman and his friends are very likely to increase.

But, Mr. Speaker, the chief object which I have now in view—and I trust that in seeking to attain that object I shall not go beyond the line of parliamentary debate into the domain of partisan controversy—is to show how the proposition now before us from that committee traverses the policy of the Democratic party with reference to the reconstruction of the Government.

I admit that the policy of the Democratic body is a simple policy. It is a policy easily comprehended. It is a policy in which for ten years, within my observation, they have been consistent. It is a policy which they laid down as early as 1856, in the platform made at Cincinnati, wherein they declared substantially—for I cannot recite the precise language of the declaration as it is many years since I read those resolutions—that it was the right of a Territory to be admitted into this Union with such institutions as it chose to establish, not even by implication admitting that the representatives of the existing Government had any right to canvass those institutions, or to consider the right of the Territory to be recognized as a State.

Now, sir, from that doctrine, which probably had its origin in the resolutions of 1798, the whole of their policy to this day has legitimately followed. First, we saw its results in the doctrine of Mr. Buchanan, announced in 1860, that, while the Constitution did not provide for or authorize the secession of a State from this Union, there was no power in the existing Government to compel a State to remain in the Union against its own judgment. Following that doctrine they come legitimately to the conclusion of to-day, in which they are

supported, as I understand, by the President of the United States upon the one side, and, as I know, by the testimony of Alexander H. Stephens, late vice president of the so-called confederacy, upon the other. That doctrine is that these eleven States have to-day, each for itself, an existing and unquestionable right of representation in the Government of this country, and that it is a continuous right which has not been interrupted by any of the events of the war.

This is a simple policy. It is a direct policy. It is a policy which can be comprehended. It is the policy of the Democratic party. Now, whether the President of the United States or the humblest citizen of the country accepts or avows it, he has no right whatever to call it his policy. It is the policy of the Democratic party.

I wish to lay before the House a proposition, and I beg the attention of Democratic gentlemen to it. I have written out the proposition with some care, and I think that I state exactly, and I hope not unfavorably, the position of the Democratic party on this question. The proposition is this:

1. The Democratic party maintains that a State of the American Union cannot by its own acts separate itself from its associates.
2. That the events of this war, including the individual, organized, and public acts of the

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people and governments of the eleven rebellious States, have not in any way changed the constitutional relations which previous to the year subsisted between those people and States on the one hand and the national Government on the other; and, as a consequence,

3. That those States respectively, and the loyal people thereof, have an immediate and unquestionable right of representation; provided, always, that in each case the person elected now is, and heretofore has been, loyal to the Government and a supporter of the Constitution of the country, of which fact each House is the sole judge on the question of the right of a claimant to a seat; and therefore,

4. That no legislation or amendment of the Constitution is necessary, or even proper, as a prerequisite to the full exercise of the right of representation in the Congress of the United States by the people and States lately in insurrection.

Mr. RANDALL, of Pennsylvania. If the gentleman will insert the words "the loyal people" I think he will state the position some Democratic gentlemen take.

Mr. BOUTWELL. That is the difference between the gentleman from Pennsylvania and his friend, Mr. Stephens, of Georgia. Possibly there may be no difference. Stephens insists that if a man be loyal to-day there shall be no inquiry into his previous character.

Mr. RANDALL, of Pennsylvania. I do not know by what authority the gentleman classifies me with Mr. Stephens.

Mr. BOUTWELL. I will not make any classification disagreeable to the gentleman. I wish to ask whether he means by the word "loyal" a man who declares himself to be loyal now, or does he propose to ascertain whether the man has heretofore been loyal?

Mr. RANDALL, of Pennsylvania. I mean to say, on the question of representation, that when a man comes from a State, competent to be qualified as you and I have qualified, we should admit him.

Mr. BOUTWELL. That is a proposition, and not an answer to the question.

Mr. RANDALL, of Pennsylvania. The gentleman has urged the great consistency of the Democratic party. If he will allow me, I will send to the Clerk's desk, to be read, a portion of the Chicago platform. I would like to show the inconsistencies of his own party.

Mr. BOUTWELL. I have no time for the inconsistencies of any party. When I have proved the consistency of the gentleman's own party I think he ought to be satisfied. They have been consistent in wrong-doing so far as the interests of the country are concerned, and upon the point I make an observation which I desire to have considered in connection with the distinction with which I preface it.

I do not say that every man who supports the propositions which I have stated here to-day gave aid and comfort to the rebellion and participated in treason, but the converse of this proposition is true, and the country ought to notice the fact. The instincts of men are higher than the reason of men, for through the instincts God teaches without the intervention of fallible logic and theories of reason. The instincts of men are right on all these matters. The affirmative proposition that I lay down is, that as far as there is any testimony before the country, every traitor of the South and every sympathizer with treason in the North sustains the policy of the Democratic party and the President. That is an alarming fact.

Mr. CHANLER. The gentleman dropped his voice and we have not been able to hear the last words which he

uttered.

Mr. BOUTWELL. If I have said something that the gentleman from New York did not hear I commend him to the Globe of to-morrow morning, for I do not propose to make any change in what I said.

Mr. CHANLER. The gentleman's argument was evidently confined to his own party as we did not hear it here.

Mr. BOUTWELL. Now, then, we traverse these propositions, and if there be any gentleman upon this floor not identified with the Democratic party who still sustains what he understands to be the executive policy, I will offer him five minutes of the brief time remaining to me to show to the House and country where the policy of the President differs from the ancient and consistent policy of the Democratic party.

Mr. RANDALL, of Pennsylvania. I will show the gentleman.

Mr. BO UTWELL. The gentleman is not called upon.

With all kindness I desire to ask my friend who represents the sixth district of the city of New York [Mr. RAYMOND] whether he does not see that these propositions, which are sustained by the President and the Democrats throughout the country, if carried into effect portend the destruction of the Government.

First, chiefly we traverse the Democratic propositions by a resolution now before this House in this particular. We admit equality of representation based upon the exercise of the elective franchise by the people. The proposition in the matter of suffrage falls short of what I desire, but so far as it goes it tends to the equalization of the inequality at present existing; and while I demand and shall continue to demand the franchise for all loyal male citizens of this country—and I cannot but admit the possibility that ultimately those eleven States may be restored to representative power without the right of franchise being conferred upon the colored people—I should feel myself doubly humiliated and disgraced, and criminal even, if I hesitated to do what I can for a proposition which equalizes representation.

Can any party or any man defend the proposition now before the country to allow the States lately in rebellion to come in with their power undiminished, so that two rebel soldiers, whose hands are dripping with the blood of our fellow-men, whose opinions as to the right of this Government to exist are unchanged, shall exercise the political power of three loyal Union soldiers? Yet the gentlemen who support this proposition ask the country to accept these States here with their representation undiminished. And those echoing the language of Alexander Stephens are unwilling that the Constitution shall be amended in this particular until the return of the eleven States, thereby rendering it absolutely impossible that there shall be any adjustment of these difficulties after the return of those States.

I can do no less than say that I believe that the man of whatsoever party or State who adopts this proposition or uses his influence for its support by the people, is recreant to the cause of justice, of liberty, and of humanity on this continent. And yet, to that doctrine, so full of injustice, and so flagrant in principle, the Democratic party is committed. And in this hour of the nation's peril it is our sad misfortune that we are compelled to admit that he who has received the suffrage of a generous people for the second office in the gift of the country accepts that as his doctrine.

The justification of all this is "once a State always a State;" that there is no power in the General Government to resist this policy; and that we who say that nothing shall be done in the way of restoration to political power to those States until this inequality is adjusted, are ourselves disturbers of the public peace and advocates of disunion.

Well, sir, I am for a Union, and for that Union only in which there is substantial justice among the men and between the States composing it. I accept one fact, and no gentleman can escape the force of that fact, and that, is, that these eleven States are not to-day represented in the Congress of this country, and with my consent they never shall be until this inequality is adjusted, or its adjustment provided for. That is the fact. How it has come to pass that they are not represented is not material to the business we have in hand. I accept the statement made by Mr. Lincoln in his last public address, that these States are out of their proper practical relations to the Union, and I assert as a necessary and natural consequence that they cannot get into their proper relation except by our consent who represent the loyal States of this country. This is the material fact, and it is wholly unnecessary at the present time to inquire into the truth or falsity of the various theories which have been presented on the subject.

Some objection has been made by gentlemen on this side of the House, as well as the other, to the third section of the article reported by the committee. I freely confess that the adoption of the third section is not necessary to the subject-matter which we have in hand. My own views of reconstruction lead me in the opposite direction. I should prefer to include those who are our friends rather than exclude even those who are our enemies. But inasmuch as gentlemen on this floor are not prepared, as they say, to include those in the governing force of

the country who have sustained the country, I see no safety in the present except in some sort of exclusion of those who are its enemies. We are to consider what sort of enemies these men are. We have defeated them in arms, but in the proposition of the Democratic party, we invite them to the only field in which they have any chance of success in the contest in which they have been engaged.

They have been beaten, and what do you ask, and what do you offer? You ask them to come into the councils of the nation where they have a chance of success, and where the only chance of success remains. Who are these men? They are the men who to-day are radically, honestly, persistently, and religiously opposed to this Government if this Government exercises its functions. The gentleman from Wisconsin [Mr. ELDRIDGE] may not have heard of what Mr. Stephens told the committee; and who is Mr. Stephens? Mr. Stephens was believed to be the most conservative, most Union-loving man in the whole southern country; and if the opinions to which I shall refer be his opinions, with how much stronger reason may we suppose that they are the opinions of those to whom formerly he himself was somewhat opposed. What does he tell us? He tells us that in 1861 he protested against the action of the secessionists, not because he believed that they had not a constitutional basis upon which to stand, but because he thought secession bad policy, and he says that to-day his opinions are unchanged; that is to say, Mr. Stephens believes that this Government has no right to exist if the insignificant State of Florida, for instance, thinks it ought not to exist; and what Mr. Stephens believes, according to his own testimony, is believed by the great majority of the people whom he represents in Georgia, and in various portions of the South, and whose views he understands. These are the men that you are invited to receive into the Government of the country, men who deny the right of this Government to exist.

It is said by gentlemen on the other side of the House that when they present a Representative here he must be a loyal man. I need not say to gentlemen acquainted with the technicalities of the law, that a loyal man, for all purposes of representation, is a man whose disloyalty cannot be proved. When we open the doors of the Senate and of this House to representatives from that section of the country, they will only have to present men who cannot lie convicted of having participated actively and willingly in the work of treason; but they may send men here who represent treasonable and disunion opinions, and we shall have no power to protect ourselves against them. When ever was a more insidious idea presented to the people of this country than that there is any security in demanding merely loyal representatives? We are false to our duty if we do not go further and require that in each of these States, before they are allowed representation, the masses of the people shall be loyal, for the representative will reflect the views of the people. You cannot gather figs from thorns, or grapes from thistles. You

must wait, if it be necessary to wait, until there is a loyal controlling public sentiment in each one of these States. It is nothing to this country that Tennessee sends Mr. Maynard, a loyal man, here. We want to know what Tennessee is; and the circumstance that Mr. Maynard is himself a loyal man, if his State is not loyal, is a reason why he should neither ask to be received or we submit to his admission. And it is not sufficient that there be loyal districts in the State. A State is represented in the Senate and in the House as a State. There is no constitutional capacity for representation except through State organization. Representatives in this House are apportioned by the Constitution among the several States.

When we find that Tennessee is, as a whole, loyal to the Government, then we may accept Representatives from Tennessee, and trust to the people to send loyal men here. But if we accept Representatives from Tennessee because they, individually, are loyal, while Tennessee herself is disloyal, you will have thrust into this House and into the Government of the country disloyal men; and what does it portend? Mr. Stephens denies the constitutional efficacy of our amendment abolishing slavery. He says that slavery has been abolished by the States. He says that the law taxing the people of this country has no constitutional force, because they are not represented. Do you not see that his insidious and dangerous doctrines, which are responded to by the whole Democratic party of the country, portend the destruction of the public credit, the repudiation of the public debt, and the disorganization of society?

We are the conservative, the order-seeking, the Union-loving, the loyal men of the country. They who oppose measures for the pacification of the country with reference to the rights of the States and the rights of men are the disorganizers, the disloyal and dangerous men of this Republic.

Sir, it will be found that the Union party stands unitedly upon two propositions. The first is equality of representation, about which there is no difference of opinion. The second is, that there shall be a loyal people in each applicant State before any representative from that State is admitted in Congress. And there is a third; a vast

majority of the Republican party, soon to be the controlling and entire force of that party, demand suffrage for our friends, for those who have stood by us in our days of tribulation. And for myself, with the right of course to change my opinion, I believe in the constitutional power of the Government to-day to extend the elective franchise to every loyal male citizen of the Republic.

If I have any time left I will yield it to the gentleman from Iowa. [Mr. WILSON.]

The SPEAKER. The gentleman from Massachusetts [Mr. BOUTWELL] has two minutes of his half hour left.

Mr. WILSON, of Iowa. That is so short a time I will not avail myself of it, as it will not admit of any reply from the gentleman from New York, [Mr. RAYMOND.]

RECONSTRUCTION—AGAIN.

Mr. STEVENS. I desire to give notice that unless the House shall feel otherwise inclined I will to-morrow, at three o'clock, call the previous question, and ask a vote on this joint resolution. Several of our friends wish to go away to-morrow evening, and I desire that they shall have the pleasure of voting for this measure before they leave the city.

Mr. SPALDING. Mr. Speaker, the report, of the committee has elicited in this House a most searching criticism. It is approved and disapproved, either wholly or in part, according to the views entertained by the particular individuals who have obtained the floor.

It does not, in all respects, come up to the standard which my imperfect judgment had erected, but I have lived long enough to know that very few things of a public character can be accomplished without some abnegation of one's own notions of propriety, and a respectful deference to the opinions of others.

The joint committee on reconstruction was made up of able and patriotic men. They have labored assiduously for nearly six months, and have now given to us the result of their deliberations in certain proposed amendments of the Constitution, and sundry propositions for legislative enactment.

Regarding it as more important that some definite *projet* be presented by Congress to the people of the United States than that the plan itself approach very nearly to perfection, and fearing the effect of amendments upon the successful passage of the measures proposed through Congress, I have brought my mind to the conclusion that I shall best subserve the cause of patriotism and the country's good by voting severally and collectively for the measures reported by the committee.

We are in the process of legislation to bring back into the councils of the nation a class of citizens who during the last five years have avowed the most inveterate hostility to our Government and its free institutions, and who have waged a most cruel war against our people upon the battle-field. Does any sane man believe that the loyal people of the United States who have submitted to these great sacrifices, who have incurred the risk of losing the benefit of the free institutions handed down to them by our fathers, who have, by the bravery of their sons, put clown this accursed rebellion upon the battle-field; I say, does any reflecting man suppose that we are so bereft of our senses as to admit these same men, "without a why or a wherefore," into the Halls of Congress to make laws for our government, and the government of our fellow-citizens at home, who are quite as loyal as ourselves? Sir, it is idle to say that any sane man expects it. It seems to me that the only question for our consideration is, what guarantees may Congress exact from this rebellious people—a people who not only fought us, but who declared time and again that they detested our principles of government, and that they would sooner unite with the monarchies of Great Britain and France than live under our free Government with the race they in derision termed "the Yankees?"

It has been said in high places that treason was the greatest of crimes, and that it should be made known for the benefit of all coming generations, and as an example to the civilized world that traitors would surely be punished. We have heard it said by those in authority that the leading traitors should be tried and hung, while the infatuated rank and file might be pardoned. That is my well; but I would inquire, what leading traitors have been hung? What leading traitor has been hung? What leading traitors or what leading traitor will be hung?

Mr. GRINNELL. Mrs. Surratt.

Mr. SPALDING "Mrs. Surratt!" She was tried and sentenced and hung as an assassin, and not as a traitor.

Now, sir, we propose to amend the Constitution of the United States in several respects.

As to the first measure proposed, a person may read it five hundred years hence without gathering from it any idea that this rebellion ever existed. The same may be said of the second proposition, for it only proposes that, the bondsmen being made free, the apportionment of Representatives in Congress shall be based upon the whole number of persons who exercise the elective franchise, instead of the population.

The third section—and this is the one to which exception is taken by my friends on the right and left—

proposes that no person who was actively engaged in rebellion against our Government shall have the right to vote for members of Congress or for electors of the President and Vice President of the United States until the year 1870. Is this exceptionable? Is it objectionable? If it be so, it is, in my judgment, for the reason that the duration of the period of incapacity is not extended more widely. I take my stand here that it is necessary to ingraft into that enduring instrument, called the Constitution of the United States, something which shall admonish this rebellious people and all who shall come after them that treason against the Government is odious; that it carries with it some penalty, some disqualification; and the only one which we seek to attach by this amendment is a disqualification in voting—not for their State and county and town officers, but for members of Congress, who are to be the law-makers, and for the Executive of the United States, this disqualification to operate for the short period of four years. Now, sir, will any patriotic, any loyal man object to putting this memorial upon the Constitution as they would put "*memento mori*" upon the head of a tombstone?

But, sir, there is another reason why we should ingraft this provision upon the Constitution. All our congressional legislation may be considered as ephemeral. I know that my friends on the other side of the House always take courage when we advance the idea that at some remote period they may gain possession of the controlling power in these Halls and carry measures according to the dictates of their own wisdom and sense of patriotism. Sir, let the effect fall where it may, and give consolation to whom it will, I still declare that all these matters are within the bounds, not only of possibility, but of probability, that at some not very remote period, if we admit Representatives from the rebel States into this hall without qualification, the prospect is that, in conjunction with their friends who have so strongly sympathized with them during the four years of this recent strife, they will repeal many, if not all, of the measures which we have adopted for the welfare and the salvation of the country. Hence I insist that something of this sort should go into the Constitution, where it shall require not only the action of the Senate and the House of Representatives, but the action of the State Legislatures to erase it. For this reason, and because it is dangerous at this moment to receive these men here to make laws for the loyal people of the country, I go for the adoption of this third section, which disqualifies active and known rebels from participating in the election of Federal officers.

Mr. Speaker, much is said, much has been said—too much, sometimes, has been said—about the difference between Congress and the Executive of the nation. Sir, I look upon this subject in a somewhat different light from some of my friends whose superior wisdom I am proud to acknowledge. I feel that under our Government we owe some deference to the station of the President of the United States; and I feel that, however we may differ in sentiment with the incumbent of that high office, we ought, at all times and under all circumstances, to treat him respectfully. Hence I would have preferred, from the first hour of this Congress to the last, that there should have been no personal abuse of the incumbent of the presidential chair.

I honor my friends for standing up manfully

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to their own opinions. There is a difference between the President and Congress; and, as I conceive, that difference amounts to this: the majority in Congress believe that it would be prejudicial to the best interests of our Government and nation to receive back, immediately and unconditionally, the men who were lately in rebellion. I believe this, as I believe any other great truth which was ever set before my mind for belief. I have no doubt upon the subject. Hence I cannot but be surprised that a gentleman who has gone through the rugged experience of the President of the United States should be willing and ready to trust these men now without having some of these guarantees which we are insisting upon. It is a difference of policy, as gentlemen say. Let it be a difference of policy. We will admit that our policy is to receive back these rebellious States with suitable guarantees.

It is the policy of the President of the United States, in the faith that they will conduct themselves loyally and properly, to receive them without these guarantees.

I suppose these to be the respective systems of policy of the President and of Congress. While we maintain steadfastly what we believe to be the rights of the legislative branch of this Government, while we adhere firmly to our opinions and go on legislating for such measures as we suppose the public good demands at our hands, and do it firmly, decidedly, independently, may we not, at the same time, do it without casting personal reproach upon or indulging in personal abuse of the incumbent of the presidential chair? Sir, I believe I have the character among my constituents of being sufficiently radical for all useful purposes. I am prepared to vote here with my party friends, side by side with him who goes for the most extreme measures, but at the same time I deny the necessity of using personal invectives toward the Executive of the nation or the heads of the Departments. It cannot be necessary. It is not justifiable. We have all business to transact for our constituents with the President and the

Departments. We must necessarily be brought into contact with them, and we expect to be received and treated by them as gentlemen. Why cannot we speak of them without indulging in vilification and abuse?

I have already said that, believing in the wisdom, patriotism, and sagacity of the committee which has reported the measures under consideration, I shall avail myself of their praiseworthy labors and shall vote for one and all of their propositions. I am content to take the whole of them, and hope they will be put through both branches of Congress, so that the people may see that we have a policy as well as the President.

Mr. MILLER. Mr. Speaker, I am glad that the committee on reconstruction, through their honorable chairman, [Mr. STEVENS,] have reported to this House a proposition for certain amendments to the Constitution of the United States, which, if approved by two thirds of both Houses and then ratified by the Legislatures of three fourths of the several States, will become a part thereof.

The article of the proposed amendment contains five sections.

The first provides that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

The second section provides that Representatives shall be apportioned among the several States which may be included within the Union according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But whenever in any State the elective franchise shall be denied to any portion of its male citizens not less than twenty-one years of age, or in any way abridged, except for participation in rebellion or other crime, the basis of representation in such State shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens not less than twenty-one years of age.

The third section prohibits, until the 4th of July, 1870, from voting for Representatives in Congress and for electors of President and Vice President of the United States, all persons who voluntarily adhered to the late insurrection, giving it aid and comfort.

The fourth section provides that—

Neither the United States nor any State shall assume or pay any debt or obligation already incurred in aid of insurrection or war against the United States, or for any claim for compensation for loss of involuntary service or labor.

And the fifth section gives Congress the power to enforce by appropriate legislation the provisions of this article.

These proposed amendments now being under consideration, I will give my views briefly in regard to them.

As to the first, it is so just that no State shall deprive any person of life, liberty, or property without due process of law, nor deny equal protection of the laws, and so clearly within the spirit of the Declaration of Independence of the 4th of July, 1776, that no member of this House can seriously object to it.

The next, as to representation, I deem the most important amendment, and is in fact the cornerstone of the stability of our Government. In the Constitution of the United States of 17th of September, 1787, in section two, under article one, it is provided that—

"Representatives and direct taxes shall be apportioned among the several States which may be included within this Union according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons."

The word "slave" was not very palatable to the venerable gentlemen who framed that Constitution, and therefore they used the words "all others," which, of course, meant slaves. Before the rebellion the slave States had a representation in Congress of nineteen for slaves and about five for free blacks, and slavery being now abolished, the other two fifths would add say thirteen more, making about thirty-seven Representatives from the black man's population. Now, conceding to each State the right to regulate the right of suffrage, they ought not to have a representation for male citizens not less than twenty-one years of age, whether white or black, who are deprived of the exercise of suffrage. This amendment will settle the complication in regard to suffrage and representation, leaving each State to regulate that for itself, so that it will be for it to decide whether or not it shall have a representation for all its male citizens not less than twenty-one years of age.

This amendment, Mr. Speaker, if adopted, will give the country a sufficient guarantee against any contingency that might arise in the admission of representatives from the States lately in rebellion—I mean such men as did not voluntarily engage in the rebellion, and can take the oath prescribed by existing laws. I do not regard the amendment of the constitutions of those States of much practical importance, for the same power that makes the

amendments may unmake; but to annul an amendment to the Constitution of the United States requires the consent of two thirds of both Houses of Congress and a ratification by the Legislatures of three fourths of the several States or by a convention in three fourths thereof, as the one or the other mode of ratification may be proposed by Congress; and if this amendment is adopted it is not likely it will ever be altered so as to endanger the loyal States—I mean by the loyal States those States that aided us in putting down the rebellion.

Mr. Speaker, as we have now a large Union majority in both Houses, it is the time to pass the requisite amendments, so as to have the same submitted to the respective States for ratification, and I trust that the Governors of those States whose Legislatures may have adjourned will, immediately after the approval of these amendments by Congress, convene the Legislatures in order that they may ratify them.

The third section, though it seems just on its face, I doubt the propriety of embodying it with the other amendments, as it may retard, if not endanger, the ratification of the amendment in regard to representation, and we cannot afford to endanger in any manner a matter of such vital importance to the country. I therefore, Mr. Speaker, propose to strike out this third section and submit it as a separate and distinct proposition, which certainly ought to meet the approval of all our friends. I cannot concur with the honorable gentleman from Massachusetts [Mr. BOUTWELL] that every part of a State must be strictly loyal before allowed a representation in Congress. I fear if that doctrine should be carried out some of our northern States would be left without representation in Congress; that rule might, however, suit very well for Massachusetts where they seem to be nearly all of one opinion.

The honorable gentleman, to enforce his views, repeated a portion of what Alexander H. Stephens, late vice president of the so-called southern confederacy, stated before the committee on reconstruction. I do not think, Mr. Speaker, that the sentiment expressed by that rebel southerner ought to have any bearing upon the action of this House, except so far as to prevent him from ever having a seat in either branch of Congress or holding any office of honor, trust, or profit under the United States. The honorable gentleman from New York, [Mr. RAYMOND,] in his remarks, seemed to think we ought not to irritate the southern people. While I do not wish to inflict any unnecessary hardships upon those States, we certainly have right to demand of them a sure guarantee, and they ought to thank their God that they have been dealt with so leniently after inflicting upon the country a debt of nearly \$3,000,000,000, and causing such great affliction throughout the land.

I do not wish to be understood that I would screen the leaders of the rebellion from punishment, for on them rests the sin of misleading the great mass of the southern people. These people may be thankful if they are permitted to live within and under the protection of the United States, and enjoy their property, or a portion of it, without participating in the affairs of the Government whose very life they had attempted to destroy; but Congress does not object to a representation from those States when a sufficient guarantee is given by ratifying the requisite amendments to the Constitution of the United States, provided they send here loyal men.

I feel rejoiced that my worthy colleague [Mr. STEVENS] has consented to forego some of his views in order to meet those of his Republican friends in this House in regard to amendments; and I hope the same frankness will be manifested at the other end of the Capitol.

The fourth section is to prohibit the assumption by the United States, or any of the States, of the rebel debt incurred in aid of the insurrection or war against the United States, or any claim for compensation for loss of involuntary service or labor.

The importance of this amendment, Mr. Speaker, is manifest, as there is no telling what influence may be brought to bear upon Congress at some future day when southern people have seats upon this floor. And as to the States it is necessary, in order to encourage emigration to those States, that there should be some security against inflicting such debts upon those who may choose to settle there. This amendment is also demanded by the loyal people of the country, and is similar to one which passed this House by an almost unanimous vote in the early part of the session.

The fifth section gives to Congress the power to enforce the provisions of this article by ap-

propriate legislation. This of course is requisite to enforce the foregoing sections, or such of them as may be adopted, and is too plain to admit of argument; and in fact is not, as I am aware, contested by any gentleman in this House.

In conclusion, I would repeat, Mr. Speaker, what I had occasion once before to announce on the floor of this House, that the only three amendments I deem important to the Constitution of the United States as a sure guarantee were these, to wit:

1. That the representation in Congress shall be apportioned among the several States according to the qualified voters of each State;

2. That the rebel debt incurred in the late rebellion shall never be assumed by the United States or any State; and

3. To allow a tax or duty on exports, so that foreign countries which purchase cotton shall pay a duty thereon. And it is not probable that it would be imposed on any other staple exported, and besides, the duty thus derived would doubtless amount to a very large sum in aid of replenishing the Treasury. This latter might reach some of those who in the late rebellion were aiding the rebels.

It is true this latter proposition is not now before the house, but it is before the Judiciary Committee, and I trust that committee will soon report favorably, and I certainly cannot doubt its passage by a two-thirds vote.

RECONSTRUCTION—AGAIN.

Mr. ELIOT. Mr. Speaker, at an early day during this session I offered for the consideration of the House the following propositions:

1. That the United States as conquerors in war now have the political power of the States recently in rebellion.

2. That, until action by Congress, the President, as Commander-in-Chief of the Army and Navy, has authority to organize and maintain government within said States.

3. That the said States are not entitled to take part in the government of the United States until Congress shall, on such terms as it may prescribe, confer upon them the power to act.

4. That, disclaiming all desire to impose on them hostile or burdensome conditions, and mindful only of irreversible guarantees against future disunion or secession and of plighted faith to all who have aided in the overthrow of this rebellion, we declare it to be an indispensable condition for the recognition of said States that their constitutions should secure to all the inhabitants thereof equal rights before the law without distinction of color or race.

The resolution embodying these propositions was referred, under the rule of the House, to the committee on reconstruction, and the action of that committee is now before the House in the form of a proposed amendment to the Constitution and of two bills, which will be considered in their order.

The proposed amendment contains five sections, and they are as follows:

Sec. 1. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sec. 2. Representatives shall be apportioned among the several States which maybe included within this Union according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But whenever, in any State, the elective franchise shall be denied to any portion of its male citizens not less than twenty-one years of age, or in any way abridged, except for participation in rebellion or other crime, the basis of representation in such State shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens not less than twenty-one years of age.

Sec. 3. Until the 4th day of July, 1870, all persons who voluntarily adhered to the late insurrection, giving it aid and comfort, shall be excluded from the right to vote for Representatives in Congress and for electors for President and Vice President of the United States.

Sec. 4. Neither the United States nor any State shall assume or pay any debt or obligation already incurred, or which may hereafter be incurred, in aid of insurrection or of war against the United States, or any claim for compensation for loss of involuntary service or labor.

Sec. 5. The Congress shall have power to enforce by appropriate legislation the provisions of this article.

This amendment is not, as I believe, all that ought to be offered by that committee and passed by this House and made by the loyal Legislatures of the United States a part of our organic law; but it is right as far as it goes, and upon careful examination I find contained in it no compromise of principle. That being settled I am willing to defer to the opinions of other gentlemen, and be content with the best that can be obtained.

In the fourth proposition submitted by me in December last I stated what, in my judgment, we ought to demand. But that cannot be had. The time will come, I do not doubt, when in this Union of ours all men will stand equal before the law in their political and civil rights.

One amendment to the Constitution has been passed by this House and rejected by the Senate. I felt

compelled to vote against it here although I regretted to be separated from friends whose judgment I respect. But for the reasons which I briefly gave at the time I could not unite with them upon the proposition then made.

The amendment now offered, while it is not all I could ask, is not open to the objections which then controlled my vote.

And now, Mr. Speaker, I shall very briefly give my reasons for sustaining the report of the committee and voting for the amendment which they offer to the House.

I support the first section because the doctrine it declares is right, and if, under the Constitution as it now stands, Congress has not the power to prohibit State legislation discriminating against classes of citizens or depriving any persons of life, liberty, or property without due process of law, or denying to any persons within the State the equal protection of the laws, then, in my judgment, such power should be distinctly conferred. I voted for the civil rights bill, and I did so under a conviction that we have ample power to enact into law the provisions of that bill. But I shall gladly do what I may to incorporate into the Constitution provisions which will settle the doubt which some gentlemen entertain upon that question.

The second section, Mr. Speaker, is, in my judgment, as nearly correct as it can be without being fully, in full measure, right. But one thing is right, and that is secured by the amendment. Manifestly no State should have its basis of national representation enlarged by reason of a portion of citizens within its borders to which the elective franchise is denied. If political power shall be lost because of such denial, not imposed because of participation in rebellion or other crime, it is to be hoped that political interests may work in the line of justice, and that the end will be the impartial enfranchisement of all citizens not disqualified by crime. Whether that end shall be attained or not, this will be secured: that the measure of political power of any State shall be determined by that portion of its citizens which can speak and act at the polls, and shall not be enlarged because of the residence within the State of portions of its citizens denied the right of franchise. So much for the second section of the amendment. It is not all that I wish and would demand; but odious inequalities are removed by it and representation will be equalized, and the political rights of all citizens will under its operation be, as we believe, ultimately recognized and admitted.

The third section, Mr. Speaker, disables until July 4, 1870, those who voluntarily sought to destroy the Government from taking part in the election of President and Representatives in Congress.

Will any gentleman venture upon this side of the House to argue that such men should be restored at once to all their political rights within the Union? It is clear upon adjudged law that the States lately in rebellion, and the inhabitants of those States, by force of the civil war and of the Union triumph in that war, so far have lost their rights to take part in the Government of the Union that some action on the part of Congress is required to restore those rights. Pardon and amnesty given by the President cannot restore them. Those men cannot vote for President or for Representatives in Congress until in some way Congress has so acted as to restore their power. The question, then, is very simple: shall national power be at once conferred on those who have striven by all means open to them to destroy the nation's life? Shall our enemies and the enemies of the Government, as soon as they have been defeated in war, help to direct and to control the public policy of the Government? And that, too, while those men, hostile themselves, keep from all exercise of political power the only true and loyal friends whom we have had during these four years of war within these southern States.

Mr. Speaker, if this war has not been fought in vain; if our young men have not in vain offered up their lives in battle for their country; if the treasure and life of this land have not been sacrificed for naught, this thing most not be done.

But, Mr. Speaker, this section is not vital to this amendment. It may be stricken out, and the affirmative value of the amendment will yet be retained. I do not agree with those gentlemen who have contended that the amendment would be in effect deprived of its great value if the third section is omitted from it. The objection to it, the only objection which I remember to have heard, excepting that made by the gentleman from Ohio, [Mr. GARFIELD,] which was answered by his colleague, [Mr. SCHENK,] is based upon the argument that the section would be practically inoperative. If that can be shown it should not be retained. But I have this to say in reply to this suggestion: there are two descriptions of persons who may be affected by this section. There are, first, the masses of men who do not direct affairs, but are themselves guided and controlled by others. There are, as we have reason to believe, multitudes of these men who had no heart for the rebellion, as they could see no profit to themselves, even in its success. They were led into it, seduced into it, dragged into it; yet, being engaged, they may have so far voluntarily aided as to be within the letter of this section. From their early life these men had been accustomed to defer to the will of others. Now, there may be difficulty in applying this provision to such as these, indeed, I am not anxious that it should be too generally applied. And it would probably be found, in the

practical operation of this section, that such men were not so "voluntarily" acting as to be embraced by its terms. The will was wanting. They engaged in the rebellion more by force of the will of others than of their own. But this section would reach the solid rebels, the men of weight, of personal force, of high social character and position, the leaders in the various circles; these men would be reached. There might be doubt as to the others, but here there would be no doubt. In every community the leading men are known; because they were leaders they are known. They have controlled affairs, they have formed public opinion they have swayed and directed and planned. Without these men of leading character, and strong will, and personal individual energy, the rebellion could not have gained its great propor-

tions. These men knew well what they wanted, and they knew well how they might most surely succeed. Whether in field or camp or council, in the army or in civil life, in cabinet or counting-room, in city or in country, these men are known; there can be no doubt as to them.

Now, when the whole efforts of these men were directed against the Government, I want to ask if there is any reason or propriety or decency or sense in permitting them now at once not only to be remitted to all political power, and thus to determine, so far as they can, by whom the legislation of Congress shall be conducted, and who shall be our President, but also to determine themselves the very questions involved in the reconstruction of the Government. We have become conquerors, have we not? Tell me, I pray you, when was the magnanimity of the conquering force ever tamed as the magnanimity of this nation would be by such a proposition? If this third section is stricken from the amendment I shall still support it. But unless I shall be satisfied by the arguments which I may hear that it will be so impracticable to enforce the provisions contained in it that it would be substantially inoperative, I shall vote to retain the provision in the amendment as reported.

Mr. Speaker, the fourth section of the amendment commends itself to all of us without argument. It does not need to be defended.

And for one, I am content to approve the action of the committee, and to commend it to the favor of the people whom we represent.

I can have no doubt that the duty is laid upon us by events which we could not control so to legislate that the restored Union shall be perpetual. Our people demand this now at our hands. The responsibility is fearful, but it is glorious too, if only we do right. Never had any Congress such questions to determine. They enter into the whole future life of the Republic. We have seen the false corner-stone knocked from beneath the temple. It must be replaced by a corner-stone of righteousness, solid and square and true. And that work is in our hands, and it must be done.

Now, Mr. Speaker, I believe if this amendment shall be adopted here and the bills reported shall be substantially enacted, the great work committed to us will be quickly and well accomplished. If it be possible let us act together. It is not possible that all of us can be fully satisfied. But this amendment is, in my judgment, safe and sure common standing-ground. Let us place ourselves upon it. There is room enough for all.

Mr. SHELLABARGER. Mr. Speaker, I desire to make a single suggestion in connection with the thought that has been uttered by my friend from Massachusetts, [Mr. ELIOT] in regard to the practicability of executing a provision of the Constitution or law of Congress which should exclude from the elective franchise those who are disloyal. Now, sir, I admit and have always admitted the practical difficulties which are there. As I said before, I say to-day, I would not myself apply to the masses of the common people of the South any exclusion from the elective franchise. I would not extend it to a single person whom I was not compelled to extend it to by my duty to the public.

I make this general remark for the purpose of doing what I now do. I do not fully agree with my colleague who spoke yesterday, that it would require standing armies to execute this law or this provision of the Constitution, but I suggest to him, and to all other right-minded gentlemen in regard to this matter, this really is not surrounded by any practical difficulties after all, and will not require standing armies for its execution if we are to have any Government at all. In vindication of that proposition, let me remind my colleague, and all other gentlemen who make this objection, that there is a plain provision in the Constitution to which we may recur in execution of this amendment or this statute, as I hold we may give it the form of a statute. I will read it:

"The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators."

Now, sir, there is the very law indicated in certain resolutions introduced by my friend from Rhode Island

[Mr. JENCKS] on this subject for the execution of this provision. It indicates a method for the execution of any provision that Congress may put into the Constitution. It will not require standing armies. Here there is an act providing a method for holding elections in States for Federal offices. You can have registry laws. Upon this registry list you may place the names of men who are to be disqualified and you may also have the names of all who are qualified to vote under the law. There they will stand, there they will be, to be referred to by your Government in the execution of its laws. And when it comes to this House or to the Senate to determine whether a man is duly elected you can resort to the ordinary process applicable to a trial in a contested-election case in either body, as to whether he has been elected by the men who were entitled to elect him.

That will not require a standing army, and it will be the application of the ordinary methods of carrying on a Government both of the Union and of the States.

I may add, however, in connection with this, that you can provide that the officers of election shall be Federal officers appointed by the Government of the United States, and the entire machinery that is used in regulating the elections can be provided.

[Here the hammer fell.]

RECONSTRUCTION—AGAIN.

Mr. WILSON, of Iowa. I rise, Mr. Speaker, simply to finish what I desired to say when the hammer fell as I was addressing the House before, and for the purpose, also, of giving the gentleman from New York [Mr. RAYMOND] an opportunity to submit anything in reply that he may desire.

I undertook, when I was on the floor before, to show that the remark the gentleman made to-day in justification of his vote against the civil rights bill was not in harmony with his action as a member of the House in the introduction of a bill guarantying the rights of citizens without distinction of race or color, and also in submitting to the House a proposition, which I read to the House, for the benefit of the freedmen.

I stated that I could not see that the position taken to-day was consistent with that presented by the bill and the proposition to which I referred, for it seems to me that the second section of the bill, as I have stated before, and the proposition to which I referred, embodied the principle of the first section of the civil rights bill.

I was about to remark, when my time expired, that if the gentleman intended his explanation to apply only to those portions of the civil rights bill which succeeded the first section, it might raise another question, namely, whether, after declaring all persons born in the United States citizens and entitled to all the rights and privileges of citizens, it would be competent for the Government of the United States to enforce and protect the rights thus conferred, or thus declared by the second section of the bill which the gentleman introduced.

Now, as I understand his remark to-day, it was directed to the principle involved in the first section of the civil rights bill which related to the rights to be protected by the provisions of that bill. That being conceded, the power to protect those rights must necessarily follow, as was laid down in the well-known case of *Prigg vs. The Commonwealth of Pennsylvania*, where the Supreme Court declared that the possession of the right carries with it the power to provide a remedy.

Now, sir, it seemed to me that there was an inconsistency between that record and the explanation of to-day, and as I do not wish to do the gentleman any injustice in this regard, I yield part of my time now for explanation.

Mr. RAYMOND. Mr. Speaker, I supposed it was a matter of very little consequence to any one but myself what my record might be. I do not wish here to enter into a detailed examination of that record. Those who are more concerned in regard to it than myself will probably do that for me here or elsewhere. [sic]

But with regard to my position upon this civil rights bill and the principles involved in it, I think I can explain in a very few words what it is so as to be understood by all. Almost at the very outset of this session, before the civil rights bill which passed here and which is now the law of the land, had been reported, I introduced a bill proposing, first, to strike out the word "white" in the naturalization laws, and, secondly, declaring that all persons born in this country heretofore, or hereafter to be born, should be, and were thereby declared to be, citizens of the United States.

In some remarks that I submitted upon the subject I stated that my object was either to recognize the citizenship of the men lately freed from slavery, if that citizenship existed already, or to confer upon them citizenship if they were not now citizens, and Congress had power so to confer it.

I also said that I proposed a section in the bill which declared them to be entitled to all the rights, privileges, and immunities of other citizens of the United States, whatever those rights may be.

And it followed as a necessary inference that they were to have the same security for the enjoyment of those rights and the same remedy for their violation as any other citizen had: whatever laws Congress might make to

protect other citizens in the enjoyment of their rights, they were also entitled to the protection of those laws. But the civil rights bill, when it came before us for our action, contained not only this declaration, in which I fully agreed, but it contained a provision by which the Government of the United States undertook to secure to them and to all other citizens the enjoyment of certain rights, and to provide for their violation certain remedies within State jurisdiction, where it seemed to me Congress under the existing Constitution had not the right so to act. It was this provision which rendered it impossible for me, with these opinions, to vote for the bill.

It was the remedy provided, one feature of which was giving power to the judiciary of the United States to imprison officers of the State courts for enforcing State laws, which I did not think Congress had the right to do; it was this

exercise of a power which I did not think that Congress under the Constitution possessed which constituted the reason why I voted against the bill, and I see nothing whatever in that vote inconsistent with my oft-repeated declaration that I was in favor of the principle of the bill, which was also embodied in the bill which I introduced for the purpose of securing to all the rights of citizenship with whatever power we possessed.

But now it comes before us in the form of an amendment to the Constitution, which proposes to give Congress the power to attain this precise result. I shall vote for that amendment cheerfully, because I think Congress should have that power. Now, I do not think there is any inconsistency in these two positions. If there is, the gentleman from Iowa [Mr. WILSON] is welcome to all he can make out of it. I do not feel at all embarrassed by it myself. And I submit to him that it is not of very great consequence to anybody but myself whether I am consistent or not.

Mr. WILSON, of Iowa. I admit that it is not of very great consequence whether the gentleman is consistent or not.

But there is one view of this question which I thought rendered it proper to call the attention of the gentleman and the House to this subject. The gentleman attempted to justify his vote, and in doing so referred to the pending amendment to the Constitution, and attempted to draw the conclusion that all those who might vote in favor of this amendment would be stultifying themselves if they had voted for the civil rights bill in the absence of this amendment. Now, if the gentleman will look to his remarks carefully, he will find that he referred, not to the second section, to which he now refers, nor to any other section but the first section, which declares against any discrimination in the exercise or enjoyment of rights among citizens of the United States in the several States. I quoted the provision of the bill which he introduced, and which, in addition to declaring them citizens, declared that they shall be entitled to all the rights and privileges as such.

Now, I submit to the gentleman that the Government of the United States cannot protect citizens in the enjoyment of these rights without going within the jurisdiction of the State. A citizen of the United States is always a citizen of the State in which he resides; and the rights which he possesses as a citizen of the United States can only be secured to him by laws which operate within the State in which he resides. Now, to show that the same class of rights were referred to by the gentleman, I call attention to the proposition contained in his speech made, I believe, in January last. He said that

"In the third place, we should provide by law for giving to the freedmen of the South all the rights of citizens in courts of law and elsewhere."

"All the rights of citizens in courts of law and elsewhere" are broader terms than those used in the first section of the civil rights bill; but what I insist upon now is, that the gentleman being in favor of conferring these rights in courts and elsewhere, he must of course admit the power in the Government to enforce and protect those rights "in the courts and elsewhere." Therefore, the subsequent sections of the civil rights bill were but the result of that power, affirmed by the Supreme Court in the decision to which I have referred, to protect the rights which the citizen possessed.

Mr. RAYMOND. I desire to say, in reference to that point, merely that while in that speech and elsewhere I did declare myself to be in favor of extending and securing to all citizens their rights in courts and elsewhere, I did not declare myself in favor of the doctrine that Congress had the power to enforce those rights by such penalties as is prescribed in the civil rights bill.

Then, as to invading the jurisdiction of the States, the gentleman misunderstood me. I did not mean simply that the civil rights bill authorized Congress to enter into the territorial jurisdiction of the State, I meant that it seemed to me that it trespassed upon the exclusive legislative jurisdiction of the State. I did not say or intimate that every member of the House who voted for this amendment would stultify his vote for the civil rights bill, nor did I

mean to impugn the motives of any member. I merely said that it seemed to me that by this vote the belief could fairly be inferred that Congress had not now that power.

The hour of half past four o'clock p. m. having arrived, the House, pursuant to order, took a recess until half past seven o'clock p. m.

RECONSTRUCTION.

The SPEAKER. The first business in order is the consideration of the joint resolution reported by the committee on reconstruction, on which the gentleman from Pennsylvania [Mr. RANDALL] has the floor.

Mr. RANDALL, of Pennsylvania. Mr. Speaker, in discussing this question briefly, as I am compelled to do by reason of the limited time allowed me, I shall advert to the proposition now before the House as a whole, not undertaking a lengthy discussion of the various amendments which have been proposed, and I trust the chairman of the committee [Mr. STEVENS] will, when the proper time arrives, call the previous question, and in that manner induce a vote upon the main proposition as embraced in the whole five sections of the proposed amendment to the Constitution.

And for that purpose I desire to analyze the various sections of the proposed amendment. The first section proposes to make an equality in every respect between the two races, notwithstanding the policy of discrimination which has heretofore been exclusively exercised by the States, which in my judgment should remain and continue. They relate to matters appertaining to State citizenship, and there is no occasion whatever for the Federal power to be exercised between the two races at variance with the wishes of the people of the States. For myself, I would wish that the colored race should be placed in the same political condition as it occupies in Pennsylvania; but I would leave all this to the States themselves, just in the same manner as the elective franchise is permitted. If you have the right to interfere in behalf of one character of rights—I may say of every character of rights, save the suffrage—how soon will you be ready to tear down every barrier? It is only because you fear the people that you do not now do it. I consider the Federal restraints upon the States in reference to rights of citizens as now in the Constitution safe and sufficient. I feel it, in consequence, my imperative duty to oppose this section. Grant this power, insert it in the Constitution, and how soon will the privilege of determining who must vote within the States be assumed by the Federal power? Gentlemen here admit that they desire this, but that the weak kneed of their party are not equal to the issue. Your purpose is the same, and but for that timidity you would now ingraft negro suffrage upon our Constitution and force it on the entire people of this Union.

The second section, to my mind, is ambiguous, and is liable to a doubtful construction. What does this amendment mean? Does it mean that those males over twenty-one years not allowed to vote shall not be counted in the basis of representation? If so, why not say so in terms; but if it means, as it may, that the diminution of representation is to be in proportion they bear to the voters, it may deny all or greatly abridge representation. Suppose, for instance, a State with one hundred thousand voters, and a similar number excluded, if proportions are considered this State would seem to have no Representative. I desire that my colleague, [Mr. STEVENS,] the gentleman having charge of this legislation, shall answer what they claim it to mean, so that the issue when before the country may be rightly understood.

In addition, this section makes an entire change in the basis of representation, which should in every country rest upon inhabitants. This is the safest and has been found to work the best. I do not consider there is any need to change, more especially when a large portion of our people with whom we hope for all time to live on terms of peace and equity are not now here to present their views and consider the effect this legislation will have upon their interest.

The injustice and the *animus* of the third section have been so fully stated by gentlemen on the other side that I will not consume my limited time in reproducing, but dismiss it with the remark that it is intended to secure what you most wish, an entire disagreement to the whole scheme by the eleven southern States, and a continued omission of representation on this floor. This brings me to another point in the argument of the gentleman from Pennsylvania who introduced this report.

The fourth section I need not discuss, because I believe if that proposition was presented to this House as a simple proposition it would be almost unanimously adopted. The gentleman from Pennsylvania [Mr. STEVENS] tells us—

"Upon a careful survey of the whole ground, we did not believe that nineteen of the loyal States could be induced to ratify any proposition more stringent than this. I say nineteen, for I utterly repudiate and scorn the idea that any State not acting in the Union is to be counted on the question of ratification."

In this respect let me say that the gentleman must fly directly in the face of the decisions of the Supreme Court of the United States; he has to put at naught the precedent established in reference to the amendment of the Constitution abolishing slavery; he has to overcome what is clearly the common-sense judgment of the people of this country upon this point. And moreover, I believe his opinion, as there expressed, is in contravention of the

judgment of a majority of this House, with whom he is politically associated.

Such is the plan of the committee of fifteen, or what may perhaps be described as the congressional view of this vexed question. It is a plan of disunion, and it is a deception to call it otherwise; and the friends of the Union, by whatever name, must cooperate to defeat this measure, or the Union will sooner or later be destroyed by those who have arrogated to themselves to be its special defenders.

This proposition is worthy of having emanated from the tower of Babel. It carries with it a confusion of tongues and a confusion of purposes. One design, however, is clearly apparent, and that is to secure the success of the Republican party, even in the event of the overthrow of the Union.

Now, Mr. Speaker, what have we in the opposition to this plan of procrastination and delay? The President, immediately upon his accession to the Presidency, took up the plan which Mr. Stanton informs us was the mode which Mr. Lincoln had marked out for himself; and he has steadily pursued it, regardless of threats and clamor, exhibiting a moral courage of the equal of which we have but rare instances in history. Thus guided by wisdom and prudence, he has brought us along until now the admission of loyal representatives in Congress from the late rebel States is all that is required to complete and make perfect our Union.

His plan is simple and effective, just and equitable; and acceptable, as I believe, to a vast majority of the people both North and South. What is this policy?

1. That the southern States are in the Union. Their ordinances of secession being null and void, they have never been out, and are legally entitled to representation in Congress.
2. That whenever the people in any of those States elect Union men, of whose loyalty there can be no question or doubt, it is the duty of Congress to admit them.
3. That all those claiming seats in Congress from the southern States who were prominently identified with the rebel government or rebel army should be immediately rejected and their constituents requested to elect loyal Union men in their places.

The issue is now made up, and to the people we must appeal. It rests with them whether we shall at once permit the people in the eleven States to do as Generals Grant and Sherman told the soldiers of their disbanding armies to do—go home, resume their occupations, be good citizens, and then promised them that they should not be disturbed.

No real and hearty peace can for years come from the course the majority in this House are pursuing. You are continuing to do with the loyal people of the South what the rebels did during the war, persecute and condemn them. All this is unjust, and is not the way to approach restoration. Let us leave the war-path, and return to the ways of friendship and peace.

Complaint is made, Mr. Speaker, of the support which the Democratic party, as a party, throughout the country is giving to the President in his plan of restoration. That should not surprise any one. The Democratic party, during the period of the war, have closely adhered to the Constitution and the laws of the country. They find in President Johnson that same disposition to adhere to the Constitution and the laws. The course of the Democracy, in their support of the President, is actuated by a devotion to principle. It does not emanate from any seeking for office or from any other sordid motive.

There is another matter to which I wish to direct the attention of the House, and through the House the attention of the country. I would suggest that in the view of just and reasonable men the time has arrived when this system of virulent abuse of the President of the United States should cease. It is time that there should be an end of these appeals to the morbid feelings and prejudices of the people of the North, appeals calculated to array the northern people against the people of the South, who have laid down their arms, and who, I believe, are now seeking in good faith to conduct themselves in allegiance to the Constitution. They have been punished severely, not more severely, perhaps, than they deserve. But why should we not accept their words as expressing their real sentiments? Why should we treat them as aliens and outlaws, a policy which must for a long time prevent us from securing the full benefits of our victory?

Gentlemen seem to fear that unless something done by legislation to prevent it the great conservative men of the country, under the leadership of Andrew Johnson, will come into possession of the legislative branch of the

Government. Nothing can avert this. Your reckless extravagance, your unnumbered violations of law, your constant effort to change the organic law for party purposes; your persecutions of the President, who has planted himself upon the plan of restoration which Mr. Lincoln determined upon and your careless mode of taxation, relieving affluent men and heaping the expenses of our debt upon those least able to bear it—all these point to

your certain overthrow.

All these points are certain to have their effect. The Democracy, so far as I know, stand ready to operate with any party or set of men to crush out the party which started with a disposition to let the "South go," and now at the close of the war seek the same practical result—a continued separation of the States of the Union.

I now yield the floor to my colleague.

Mr. STROUSE. Mr. Speaker, any proposition to amend the Constitution of the United States would, a few years ago, have excited and aroused the greatest interest on the part of the people as well as of Congress. The good old charter produced by the inspired wisdom of the great and patriotic men who founded the Republic is ignored by the modern reformers. Amendments are offered and passed with as much haste and facility as a bill to admit a wilderness with a few hundred adventurers roving in it as a State in the Union. There is danger in this, danger to the country at large, danger to our institutions and liberties. The Constitution was never intended to be plastered and patched as latterly it is proposed to do, no more than the Union of States formed by the thirteen old colonies was ever designed to be broken or severed by secession or rebellion of any one or more States. We are prone to speak lightly of an amendment to the Constitution, as if it were no more than the passage of an ordinary act. I regret this exceedingly. Members of Congress, who are here to represent the great body of the people, should be extremely cautious how they tamper and tinker with the fundamental law. History should be our guide and counsel. The gradual undermining, changing, altering, and amending of the foundation so strongly built, so massively erected, so skillfully constructed by the master minds of the revolutionary patriarchs, may destroy the temple of the Republic which so majestically rested on it for eighty years.

What necessity is there now, Mr. Speaker, that demands the change which this bill calls for? I am answered that the necessity grows out of the war, that the South is vanquished, the negroes are liberated, and that therefore the organic law must be so amended that the emancipated slave shall in all respects be the equal of the white man. Well, I have listened patiently during this week to the many heavy and light speeches made here on the subject in hand by the friends and advocates of amendment and negro equality, from the chief engineer down to my dramatically tragic colleague who reads anonymous rebel letters for the instruction of this House, and yet I am not enlightened on the subject under discussion. Instead of debating this grave and serious question as becomes statesmen and jurists, we hear some six or eight stump speeches every day, and in truth, not very courteous or good at that. Gentlemen on the loyal side, as it is called, in place of arguing the point of difference among themselves, that is, whether the southern States are in or out of the Union, or whether they see conquered provinces and the people aliens, or States and the people citizens, indulge in political slang, abusing and vilifying the Democratic party by charges and accusations as groundless as they are discourteous. I honestly believed that the time had gone by for the utterance of such foul and false attacks and aspersions, and especially in this place. The Democratic party of the country and the Democratic members of this Congress require no defender here or elsewhere. The history of the United States is the history of the Democratic party; its creed is the Constitution, and its principles have been for seventy-five years the operative cause of our country's rise, progress, strength, and greatness.

When I see members here so intensely loyal, who owe their present bombastic greatness to the kindness and generosity of the Democratic party, and who now traduce and malign their Democratic colleagues, I cannot help thinking that ingratitude is a crime and ought to be made odious. I am inclined to think that there are some furiously loyal gentlemen here, who, when they shall give an account of their stewardship to their constituents, maybe politely informed, by virtue of the power vested in the people, that the private station is henceforth their post of honor, and *sic transit gloria mundi* for hypocritical loyalty, niggers, universal suffrage, bureaus, southern plantations, office, power, glory, bag, and baggage.

Mr. Speaker, my first inquiry is, are the southern States still States and integral parts of the Union, or have they, by the act of secession and war, brought themselves to a territorial condition, or the condition of a conquered foreign country, now reduced to provinces? The chairman of the reconstruction committee [Mr. STEVENS] answers affirmatively, and doubtless many others here hold the same opinion. If this be so, if that is the status of the southern States, then all your constitutional amendments, acts, conditions, prohibitions, and directions are in order and must be submitted to by the conquered and vanquished foreigners inhabiting Virginia, the Carolinas, Georgia, Louisiana, &c.

It cannot be that this monstrous doctrine is seriously entertained by a majority of this House. This point has been so thoroughly discussed that it were a waste of time to enlarge upon it. A short time ago, when I had the honor to address the house on a subject akin to this, I stated that our case, the late rebellion, is *suigeneris*, which cannot be classed under any ordinary description of war, civil or foreign. The law of nations, as construed by

these old and eminent authors in monarchical Governments in a past age, ought not and cannot be fairly applied at this day in our dealing with a portion of our own people, inhabiting a part and parcel of our own territory. A war with a foreign Power, or with a sovereign nation, would place the legal question involved in a very different light. We quelled the rebellion among our own citizens and in our own country. We conquered nothing. We have not more territory, people, or property than we had before. This, in my judgment, is the rational and natural deduction from the premises, in law and in fact.

And this is my opinion now, that the States are and never ceased to be, in law and in fact, constituent parts of our Union. If I am correct in this opinion, and it is the view taken by the most eminent lawyers and publicists of the country, then what necessity exists for these amendments of the Constitution? Let the States be represented in the Senate and House by men who can conscientiously qualify as members, and after that, when we have a full Congress, with the whole country represented, let any amendment that may be required be proposed, and let those most interested have an opportunity to participate in the debates and deliberations of matters of so much moment to every citizen. If it were not for the malignant party spirit, the overweening desire to perpetuate radicalism, proscription, and the centralization of power instead of enlightened statesmanship acting in a spirit of justice and equity, the States would now be in their proper positions *quo ante bellum*, contributing and adding to the general welfare and prosperity of the country, North and South.

While discussing the report of the committee with a learned friend of mine, he informed me that the subject was most ably treated in an editorial in the New York Times. The Times is acknowledged to be one of the ablest and most leading republican papers in the United States. Fully concurring in the views therein expressed, I beg to read the article for the benefit of this House. It is sound, patriotic, statesmanlike, and just, and well deserves the serious consideration of every truly patriotic man who loves his country, its history, and glory:

"As a plan of pacification and reconstruction, the whole thing is worse than a burlesque. It might be styled a farce, were the country not in the midst of a very serious drama. Its proper designation would be 'A plan to prolong indefinitely the exclusion of the South from Congress by imposing conditions to which the southern people will never submit.' This being the obvious scope and tendency of the proposition, we are bound to assume that it clearly reflects the settled purpose of the committee. So that the joint committee, appointed nearly five months ago to take exclusive charge of the question of reconstruction now offer as the result of all their labors what would in fact render reconstruction forever impossible.

"There is an anomalous feature in the affair as it stands, which of itself reveals the monstrous nature of the pretensions set up by the committee. All the provisions of the proposed amendment imply the adoption of the extreme view in regard to the relation of the South to the Union. We must begin by assuming that what were States before the war are mere Territories now; or this attempt to dictate terms as the condition of recognition becomes undisguised usurpation. We must assume, in fact, that the South is at this moment neither more nor less than an aggregate of Territories, waiting for admission as States, and from whose people Congress may therefore require compliance with certain proposals. And yet the amendment, on its face, declares the existence, as States, of all the States recently in rebellion, and presupposes the exercise by their several Legislatures of the highest constitutional attribute of State sovereignty. They have no right to representation in Congress, forsooth. They may not say yea or nay on the most trivial questions that come before Congress. They are not permitted to enjoy a particle of influence in matters affecting the finance, the trade, the industry, the foreign relations of the country, or any of its concerns, great or small. These privileges they are denied on the pretense that they are not within the Union, and therefore have no right to recognition as parts of the Union. Nevertheless, under the contemplated amendment, they are treated as sovereign States, whose ratification of the amendment is essential to its constitutional validity. They are to vote for or against a change in the Constitution of the Union of which, on the radical hypothesis, they are not present members! Could absurdity go further? Could the folly of this fanaticism be made more manifest?"

"From the dilemma into which the committee have thus plunged there is no logical escape. If the southern States are in a condition by their Legislatures to ratify or reject a constitutional amendment, they must of necessity be qualified to send Senators and Representatives to Congress, subject only to the judgment of either House as to the eligibility of the persons sent. A State which may assist in the sovereign task of molding the Constitution under which Congress acts may surely demand a voice in what the Constitution creates. The greater right covers the lesser right in this or in other cases. On the other hand, if the southern States are not entitled to admission to Congress—if the point be established, as the radical doctors say it is, that these are States no longer, but Territories only, subject to the will of the

conqueror—then it follows that they are not entitled to any lot or part in the business of amending the Constitution. Upon which horn shall the 'central directory' be impaled? Shall we take it that this prodigious amendment, this mighty mouse brought forth by a mountain after five months' parturition, does not mean what it says when it speaks of the States lately in rebellion as States still, with their sovereign functions unimpaired, though for a time uninterrupted? Or shall we conclude that the doctrine of State suicide is abandoned, the doctrine of subjugation given up, and the criminal blunder of which the radicals have been guilty in excluding the South from Congress at length confessed? Let there be explicit answers upon these heads of the subject. As it at present appears the position of the committee is utterly untenable.

"Aside from these points the worthlessness of the committee's proposition is obvious. It cannot by any possibility effect anything. We may confidently take it for granted that the people of the South will never under any circumstances acquiesce in their own disfranchisement for four years in reference to all that relates to the Federal Government. There is room for difference of opinion on the general merits of the reconstruction problem; on this point there can be none. The death has taken its stand on the ground of a common citizenship, and it will never accept as the price of congressional representation that which would be equivalent to an acknowledgment of four years' serfdom or inferiority as the penalty of rebellion. Nor should it be asked to accede to terms of this nature. Punish the rebel leaders, if necessary, by banishment or otherwise. But to propose to punish a whole people to suit the partisan conveniences of those who dictate the penalty is an outrage upon justice and common humanity. With all their errors and faults, the southern people have shown that they are not cowards. They will not belie their nature by writing themselves down slaves at the bidding of a committee appointed to consider the question of reconstruction.

"If we would do aught to hasten the result which all moderate men admit to be exceedingly desirable it is necessary, without more ado, to discard the idea of constitutional changes as the condition-precedent of the readmission of the South to Congress. That is the primary step toward reconstruction, practically

considered, and we should prepare to take it on the ground of existing rights, subject only to the lawful test of individual fitness. To talk of wholesale and almost indiscriminate punishment as a preliminary measure, to call for concessions implying the relation of supplicants petitioning for favors instead of citizens insisting upon their rights, to demand a confession of inferiority with one breath, while with another admitting the existence of constitutional equality, is to aggravate feelings already much too bitter, and to multiply difficulties which the joint committee have thus far vainly endeavored to overcome."

Mr. BANKS. Mr. Speaker, the measure before the House presents a basis upon which it is proposed the insurgent States shall be restored to the Union. It is, therefore, the most important question which can be presented to the House or to the country. It deserves the most mature consideration. I should have been glad if a more general and thorough discussion of the subject could have been had on these particular measures, but the House has decided otherwise. I desire to make a few suggestions as briefly as possible, chiefly in reference to what has been said by other gentlemen who have addressed the House. It is my belief that reorganization of governments in the insurgent States can be secured only by measures which will work a change in the basis of political society. I do not think this can be done by theoretical constitutional or statutory provisions. Anything that leaves the basis of political society in the southern States untouched leaves the enemy in condition to renew the war at his pleasure, and gives him absolute power to destroy the Government whenever he chooses. Therefore, sir, no proposition meets my entire approval that does not propose a radical change in the basis of political society in these States; but I do not, of course, expect the House to adopt my opinions, nor do I ask that they shall be embodied in these propositions which may be adopted.

There are two methods by which the change I propose can be made: one by extending the elective franchise to the negro; the other by restrictions upon the political power of those heretofore invested with the elective franchise, a part of whom are loyal and a part of whom are disloyal; a part of whom are friends and a part of whom are enemies.

I have no doubt that the Government of the United States has full power to extend the elective franchise to the colored population of the insurgent States. I mean authority; I said power. I have no doubt that the Government of the United States has authority to do this under the Constitution; but I do not think they have the power. The

distinction I make between authority and power is this: we have, in the nature of our Government, the right to do it; but the public opinion of the country is such at this precise moment as to make it impossible we should do it. It was therefore most wise on the part of the committee on reconstruction to waive this matter in deference to public opinion. The situation of opinion in these States compels us to look to other means to protect the Government against the enemy.

The other has reference, of course, to the disfranchisement of those who are or may be considered public enemies. In regard to that section of the amendment relating to representation, I have this to say: while it is entirely equitable, and does not admit of question on that score from any quarter whatever, yet I do not think it will exert any controlling influence upon the political character of those States. It reduces the representation of the insurgent States some fifteen members. The reduction is not of paramount importance, whether they have more or less members, however loyal they might be. It is but just that they should be restricted to a fair share of representative power. But they do not seek to govern by opinion. They do not rely on ideas for success. They govern by force. Their philosophy is force. Their tradition is force. Whether they be few or many, they will have power whenever they are restored here. While, therefore, sir, I accord cheerfully with the proposition, it does not meet the emergency presented at this time.

The third proposition is one which disfranchises the enemies of the country. I approve that. I think it right in principle. I think it necessary at this time. If I had any opinion to express I should say to the gentlemen of the House that it is impossible to organize a government in the insurgent States and have the enemies of the country in possession of political power in whole or in part, in the local governments or in representation here.

It does not change the result, in my opinion, if you couple with this the franchise of the negro. Certainly it will be much better, if rebels are allowed to vote, that the privilege should be extended to the colored people. I propose, so far as I am concerned, to lose no opportunity to impress upon the country the necessity for the extension of suffrage to the colored men, in the best and most effective way possible. But that question is not now presented.

Now, sir, what are the objections to the disfranchisement of the enemies of the country? And in speaking of them I mean those who organized and sustained rebellion against the Government of the United States for five years; who contemplated it for thirty years; who are ready now, not as friends, but as enemies of the Government, to accept whatever share of power may be accorded to them in a Government where the people have the entire power to do that which seems to them right and just. An enemy to the Government, a man who avows himself an enemy of its policy and measures, who has made war against the Government, would not seem to have any absolute right to share political power equally with other men who have never been otherwise than friends of the Government. That proposition would seem to recommend itself to the judgment of every man.

But it is said that there are certain practical difficulties in this matter which ought to control our judgment. It was intimated the other day that there had been some understanding when the enemies of the country laid down their arms that they were to return to power; an implication, if not an agreement, that we are to restore them to their full status as citizens of the United States, with local and representative power.

Now, sir, I do not agree to that at all. I think they had the most distinct information possible given from every department of the Government, by all its officers under all circumstances, that they were not to claim or receive political recognition or the recognition of political power. They surrendered because, as they say, they were beaten. They could not or did not choose to continue the fight any longer, and they laid down their arms, as I believe, with the conviction that it was impossible for them to prosecute the war any further.

The measures adopted by the Government at the time of the surrender show exactly its determination, which the enemy could not misunderstand. General Johnston of the rebel army proposed a treaty with the army of the Union in which it was stipulated that the rebels would lay down their arms on condition that the rebel State governments should be recognized, the Supreme Court deciding where conflicting governments existed. and that the people should be guaranteed their political rights and franchises as well as the rights of person and property. This was summarily rejected by the Government. President Lincoln, when applied to by General Grant for instructions, sent a dispatch written by his own hand, with the approval of President Johnson, directing General Grant to have no communication with General Lee unless for the capitulation of his army, and not to decide, discuss, or confer upon any political question. Certainly those officers who treated with General Grant could not have had any expectation of that kind.

The terms of surrender to General Grant were that the rebels were to return to their homes, not to be disturbed so long as they observed their parole and the laws in force where they resided. The Attorney General decided that they had no right to return to the places where they resided before the war within the loyal States, and that to wear

the rebel uniform was a violation of their parole and a fresh act of rebellion.

President Lincoln, as late as March, 1865, in a proclamation in which he referred to a bill passed by both Houses of Congress, declared that while he did not assent to all its provisions, he should be governed by its conditions in any settlement that he should undertake with the insurgent States. One of these conditions was that the mass of rebel leaders, civil and military, were to be forever excluded from political power. President Johnson, in his proclamation of May 29, 1863, which, I think I may say here, what I have said elsewhere at all times, presents a plan of settlement that would be entirely satisfactory to the country, and enable us to reorganize these governments immediately without detriment or danger—President Johnson, in his proclamation of amnesty of the 29th of May, 1865, declares that all persons in military or naval custody, as prisoners of war, including, of course, all the paroled officers and soldiers of the rebel army, were excepted from the act of amnesty and pardon. The proclamation enumerates thirteen or fourteen distinct classes of rebels, embracing nearly all the influential people of the rebel States, who were excepted from the benefits of that proclamation. These facts show that there is no ground for the supposition that the surrender of the rebels proceeded from any just expectation of being restored to power in the Government. And, so far as the President is concerned, his proclamation gives evidence that it was not his intention, even some months after the surrender, to receive them or recognize them as the representatives of political power.

It is said that the acts of pardon granted in individual cases, or the general charter of amnesty and pardon of the 29th of May, changes in some measure the political relation of the public enemies to the Government itself. I do not think so. A pardon does not confer or restore political power. A general act of amnesty differs from an individual pardon only in the fact that it applies to a class of offenders who cannot be individually described. It secures immunity from punishment or prosecution by obliterating all remembrance of the offense. But it confers or restores no one to political power. On the contrary, the general charter of amnesty, even if authorized by Congress, as it may be said to have been by the act of July, 1862, contains conditions and limitations of purpose which excludes any idea of restoring political power to public enemies who might be affected by its provisions. Amnesty and pardon are granted to all persons not in the excepted classes, "with restoration to rights of property" in cases where legal proceedings had not been instituted for its confiscation. So far as the charter of amnesty and pardon is concerned, by its own conditions and terms, by its express terms, all idea of extending to them political privileges or power is excluded.

But, sir, the effect of a pardon deserves to be a little more carefully considered. A pardon restores a criminal when pardoned to all the rights that can be conferred upon him by the authority granting the pardon. That is all. If the President of the United States, in addition to the authority to pardon which he has, had also the power to invest those people with political rights and he expressed it in his pardon, then they would not only be free from prosecution, but be invested with political rights; but the President has no such power. He has the simple power of pardon.

The power of declaring who shall exercise the franchise is in the first instance conferred upon the States by the first article of the Constitution; and in the second instance, by the provision conferring the right to judge of the election of its members, on the Congress of the United States, and without their concur-

rence the President has no right to invest franchise in anybody. Several of the States have in the exercise of their undoubted right disfranchised those regarded as public enemies. Congress has refused admission to persons claiming rights as members. By the several acts from 1861 to 1865 it has declared the inhabitants of the revolted States to be public enemies. It forbade all commercial intercourse or correspondence with them. It passed laws for their punishment as traitors. Until these acts of the States and of the General Government are repealed by authority of the States and of Congress no person can exercise political power of his own right, or any other than a delegated power.

A pardon whether by individual act or by general amnesty does not, and cannot, change this condition of things. I suppose this principle to be so well established that it does not require the citation of authorities to maintain it. I venture to say that there is not in the history of law a single case of pardon which is held to invest persons with political power in a Government or State other than that controlled by the authority granting the pardon, or to restore other right than exemption from prosecution or punishment. It is a principle which has at least been recognized by the law department of the Government. I think Attorney General Cushing gave it as his official opinion explicitly that a full pardon cannot be held to restore political rights.

Now, it is said that this disfranchisement cannot be enforced. Why not? Because, forsooth, the States to be

affected will not accept it. Very well. It is not necessary; there are twenty-five States represented in this House. Twenty-seven is the number necessary to amend the Constitution. The States of Tennessee and Arkansas will accept this proposition of disfranchisement without hesitation. They have already adopted the principle in the organization of their own State governments. It would be impossible otherwise for the loyal men of Tennessee and Arkansas to maintain governments, and their consent gives us the requisite number of States to make the amendment a vital part of the Constitution. If it be defeated at all, it will be defeated by the republican States or by the Democratic States of the North. It will not be defeated by the insurgent States. There is, then, no justification for the opinion so strongly expressed, that this measure will fail because the rebel States will not consent to the disfranchisement of any portion of their own people. The proposition is for the loyal States to determine upon what terms they will restore to the Union the insurgent States. It is not necessary that they should participate in our deliberations upon this subject, and wholly without reason that they should have the power to delimit it. It is a matter of congratulation that, they have not this power. We have the requisite number of States without them. It is said, again, that we cannot enforce it in these States because seven eighths or nine tenths of the people are enemies to the Government. That is not true. We do our cause great injustice, and we do the people of the South infinitely greater injustice when we accept and publish as our own the arguments of rebel enemies of the country. They say that the whole people of these States voluntarily made war against the Government. Mr. Speaker, it is not so.

I do not believe that there is a State in this Union where at least a clear majority of the people were not from the beginning opposed to the war; and could you remove from the control of public opinion one or two thousand in each of these States, so as to let up from the foundations of political society the mass of common people, you would have a population in all these States as loyal and true to the Government as the people of any portion of the East or West.

I know that the people of the South are filled at present with prejudice against the civilization, the institutions, and the people of the North; but the moment they have felt the beneficial effects of that civilization, whenever they become acquainted with our people, as they will at no distant day, they will cordially and honestly fraternize with them. It requires a little time, but the result is inevitable.

During this terrible war, which has cost the people a million of lives, and of treasure inappreciable, the people of the South have been compelled to take up arms and sustain rebellion. In the Southwest it was made a crime; punishable in the severest manner, for any rebel soldier to declare publicly or to his comrades that this was the rich man's war and the poor man's fight. But it was nevertheless a fact. The people knew that it was the rich man's war and the poor man's fight. The legislation of the insurgent States exempted to a great degree the rich men and their sons on account of the possession of property, while it forced at, the point of the bayonet, and often-times at the cost of life, the masses of the people to maintain their cause. There is nothing in the whole war more atrocious than the cruel measures taken by the rebel leaders to force the people who had no interest in it and were averse to sharing its dishonor and peril. And no public act, in my opinion, manifests more wisdom or a keener sense of justice than the exclusion by the President from the benefits of the charter of amnesty the rebels whose fortunes exceeded \$20,000. Would that it had been enforced against them!

Now, if by any means we could reach the masses of these people we should find loyal men in numbers and strength in all these States. The common people have no interest hostile to the United States. I do not mean that class of men best acquainted with public affairs. I mean the men who have borne no part in the important duties of public life—the common men, the laboring men. We shall find that ultimately, and at no distant day, they will become the truest and best friends of the Government; and this amendment, as I understand it, will contribute greatly to the beneficent result.

Sir, it does not exclude and it will not exclude nine tenths of the population of any of these States. How will it operate? It will begin with the beginning and it will go on to the end. In the first place, it will commence its operations in the States in the valleys of the Ohio and the Mississippi. In each one of those States there is a majority of the people, perhaps a large majority, who, if left to their own judgment, will be friendly to the Government of the United States. And thus from its operations, where it can be immediately applied, and where it will be immediately successful, it will produce the exact result which we desire, the immediate restoration of the governments of the States to the Union, the recognition of the loyal people; and the disfranchisement of the implacable and unchangeable public enemies of the Union, and the creation of State governments upon the sound and enduring basis of common interest and common affection.

Suppose, for instance, that until 1870 some of the southern states—South Carolina, Georgia, or Alabama—should decline to accept the terms of the amendment, and remain outside of the Union. Is it not better

that they should be out than in, if that is their spirit? Will it do us any harm or them any good? I think not. On the contrary, the fact that some of the States may be admitted in 1866, as I believe they will be, and others perhaps in 1867, and so on until the last recusant Commonwealth returns to the Union, shows this to be by far the best process that could be devised for the maintenance of our Government and its institutions and the restoration of States.

It was said by the gentleman from Ohio [Mr. GARFIELD] that there is no tribunal which can judge of the proper or improper enforcement of this provision. That is an error. In regard to the election of members of Congress here is the tribunal. In regard to the election of Senators, the Senate at the other end of the Capitol is the tribunal, perfect, absolute, competent, and ready always to discharge this duty and make the right decision.

In regard to the choice of electors for President and Vice President of the United States, which seems to have caused more apprehension, the solution is equally simple, certain, and just. There is always a tribunal that is competent to judge whether this provision of the Constitution has been properly enforced. It is not altogether a new question. In 1844 the country escaped a revolution, as many persons think. They did not then, as now, comprehend the secret springs of that peril. In the State of Tennessee one hundred and seventy-five or one hundred and eighty men voted directly for Polk and Dallas as candidates for President and Vice President instead of for the presidential electors. If those votes given against the law were counted, then Mr. Polk would receive the electoral vote of that State. If they were excluded, then the electoral vote of the State would be given for Henry Clay. So closely hung the balance that for six weeks it was impossible to determine who had carried Tennessee. It ultimately became of little importance, because the vote of the great State of New York was given through Silas Wright to Mr. Polk. Had New York voted for Clay, Tennessee would have decided the election. We can now estimate the consequences of that departure from the letter of the law of a small number of Democrats in Tennessee. Had the question reached this House it would present exactly the problem the solution of which gives so much trouble to the honorable gentleman from Ohio, [Mr. GARFIELD.] And its solution removes the difficulty presented by him.

But that case does not stand alone. There is nothing new under the sun. In 1856 Wisconsin did not vote for electors on the day required by law. Her vote when presented here was not counted. If the vote of that State had decided the balance between General Frémont and Mr. Buchanan, it would have made trouble, because we now know that long and careful preparations had been made for rebellion and the opportunity only was wanting. The case presented in 1844 or in 1856 would have been more propitious than that offered by the election of Mr. Lincoln, because it would have concealed the real object of the conspirators, and secured an open and powerful support in the North. It presented the difficulty suggested by the gentleman from Ohio. But this is its solution. It exhibits the almost supernal wisdom of our frame of Government. It shows that the sacrifice of blood and treasure was well made to defend it.

In either of the cases presented by Tennessee or Wisconsin, the Congress would have been the tribunal to decide the issue. The two houses would have met in convention according to the Constitution. If they agreed the question would have been decided, and the election of President declared in accordance therewith. If there was difference of opinion in regard to the question presented, the Senate would have withdrawn to its Chamber; the House would have remained in its seats; and then after mature deliberation, it may have been for weeks or months, each House would have determined what should be done. And should the two Houses not come to the same conclusion, and refuse to recognize an election, the President of the Senate, or in his absence the honorable Speaker of this House, would have administered the Government until another election could have been held. This would have been done by resolution of Congress within eighteen months from the 4th of March when the vacancy was found to exist. The Constitution is equal to every emergency, and what there is defective, if anything, the wisdom of the people will supply. If then, as lately, a portion of the States had determined

to break up the Government, they would then have appealed to arms, and been beaten, in the providence of God, as now. Men in every crisis of our history have predicted the failure of our Government, but it has stood every storm thus far, and will last, I trust, till time is no more. There is less chance of difficulty from this cause than ever before.

It is said again, on the other hand, that there has been no successful example of this plan of organization of Government. Mr. Speaker, America presents new illustrations of history and of government. But we are not left entirely without light. It will be so to the end. She is the pioneer of Christian nations. If we were without a guide, it would not be unwise for us to say that the powers of the Government should be intrusted to its friends and not to

its enemies. In a dark night, on a stormy sea, the humblest man on ship-board would know enough to advise that the helm should be put in the hands of a man who wanted to save the ship, and not in his whose purpose was to destroy it. We are not left without guidance. Switzerland, the wisest Government on the face of the earth, one that has encountered greater difficulties with a higher degree of success than any other, has given us a lesson which we ought not to disregard.

In 1848 she suffered from rebellion not dissimilar to ours. She met it as we did. The insurgents were conquered. The revolt was suppressed. She organized governments in the cantons, as Mr. Lincoln undertook to organize governments here. The friends of her Government, soldiers and civilians, marched into the insurgent cantons, outlawed those engaged in the rebellion, and they organized governments on such principles as were consistent with the safety of the governments. They proceeded from canton to canton until all were restored. Power was maintained in the hands of its friends. The disloyal inhabitants of the disloyal cantons were deprived of the rights they had forfeited by crime. As the result of that policy, Switzerland to-day is as sound and safe a Government as there is on the continent of Europe. In a little time she readmitted her reculant sons to their former privileges, and they now, through her liberality, enjoy, without endangering her institutions, the same rights which they enjoyed before the war. What wiser course could they have followed? What better example for us? If we need counsel, to what people can we turn with greater profit than to heroic Switzerland, that for centuries has nurtured republican principles in their purity and in triumph against the despotisms of Europe?

[Here the hammer fell.]

Mr. ECKLEY. Mr. Speaker, any question affecting the fundamental law of the land demands careful and mature deliberation; and it is only when the necessity is great that such changes can be justified. That necessity is upon us, and we cannot, in view of the past and our duty to the present and the future, postpone it.

My colleague [Mr. FINCK] has signaled the alarm at the proposition. Those of us who were members of the last Congress heard the same cry while the amendment was under consideration abolishing slavery, but we heeded it not. The amendment was adopted and ratified, and every person now rejoices, except a small faction known as copperheads, and they lament it only because of the loss of political capital.

The old ship has outrode worse storms than he and his colleagues can invoke from the people of the South, and she will outride this; and we shall, I hope, all live to see the day when this proposition shall become a part of the Constitution, with the same acquiescence of its predecessor, that, like this one, was born amid the storms of southern rebels and northern copperheads.

The revolution in our affairs, caused by the gigantic struggle through which we have passed, renders such a change absolutely necessary. Congress is the only organized power that can make it; and we should be craven in spirit if we shrunk from the responsibility. It is claimed that this presents questions entirely new in American politics. I do not think so. If we but follow the wise examples left us by our fathers we shall find in the footprints of the past a precedent for our action that will produce wise and salutary results.

I listened with pleasure to my honorable colleague as he described the terrific struggle through which the nation had passed; a struggle caused by these same rebels for whom he now pours out his sympathy; and I was really sorry that he stood so badly on the record during the time of that unnatural and wicked conflict. I was sorry that he and I did not stand side by side in resisting the attempts of these rebels on the nation's life, as we stood in former days when the Whig party was on earth, resisting the encroachments and demands of this same party. But, alas! how fickle is poor human nature at best. With what pleasure would I recur to the Journals of the Thirty-Eighth Congress if I could find the name of my colleague recorded in favor of any of the measures necessary to levy men, raise money, provide means, or even to punish a guerrilla for shooting down a soldier or a citizen. But with what sadness must I turn over that silent scroll to find the name of my honorable colleague, upon every measure necessary to sustain the Government and resist the rebellion, just where I should have found the name of Jefferson Davis, General Lee, Jacob Thompson, or any other of the rebel leaders, had they been placed as members upon the rolls of this House.

Mr. FINCK. I dislike to interrupt my colleague; but I desire to state what he ought to know very well, that during the Thirty-Eighth Congress I voted for every bill making appropriations to pay our men in the field.

Mr. ECKLEY. I desire my colleague to state whether he voted for the proposition to punish guerrillas.

Mr. FINCK. I will explain that.

Mr. ECKLEY. I trust the gentleman will not take too much of my time. I would like him to answer "yes" or no."

Mr. FINCK. I will state the facts. There was upon the statute-book a law to punish guerrillas. The bill to which my friend refers was to amend that law and to take away from the President the power to revise the

findings of the military courts. I voted against that bill; but I was in favor of punishing guerrillas.

Mr. ECKLEY. That is sufficient. The gentleman voted against the bill.

Sir, we must all bow to the decrees of fate, and I must grieve the loss of an early political associate; but with what indignation must I regard that party by whose winning smiles and lascivious caresses he has been seduced from the paths of virtue. What cup contains bitterness enough to pour upon their heads? What judgment is severe enough to be pronounced against them? Why, sir, in my State they would be prosecuted, under an act entitled "An act for the support and maintenance of illegitimate children."

I agree with my honorable colleague, that we have passed through a fearful ordeal; that we have made untold sacrifices, and that our flag in triumph floats over every inch of territory. I join with him in complimenting the gallant men by whose valor the nation was saved, and to whom we are indebted for victory and the peace we enjoy. To the God of battles and the God of peace do we make our acknowledgments and return our thanks. To our gallant Army in the field, to the Union party that sustained it there, will the present and future generations accord as the human agencies that saved the country from destruction against the combined attack of organized, armed rebels and organized, unarmed copperheads, each in their place in the role performing their part in the plan for the nation's overthrow. But to my colleague and the copperhead party no credit is due. They may exhibit their fantastic tricks and play their political games for a little while, but their days are numbered, and the faithful chronicler of these sad events should consign them to the grave of oblivion,

"Unwept, unhonored, and unsung."

Peace, we are told, reigns throughout our borders. I wish I could believe that. But admitting its truth, are we not bound by every consideration to secure to the people, as well South as North, such safe grounds as will forever prevent its being broken? But what securities shall we demand; and in what manner shall they be obtained? By following the precedents of our past history will we find the path of safety.

Two instances of treasonable plots and conspiracies stain our former history. The one, an armed conspiracy to resist the execution of the laws, was organized in the State of Pennsylvania, known as the whisky insurrection. That, like the late rebellion, (though small in comparison,) organized its misguided followers, set the law at defiance, plundered the public mails, and murdered the officers of the law. The Government suppressed it by the power of arms, seized the insurgents, instituted prosecutions against them; but the leader and great instigator in this outrage upon the laws escaped the country and took shelter in foreign lands, thus evading justice and saving his life. His deluded followers were saved by executive clemency. Had Bradford, the instigator, been arrested he would certainly have suffered the fate of a traitor. So cautious was the Pennsylvania Assembly at its next meeting that it carefully scrutinized the claims of all members returned from the insurrectionary district, with a view of cleansing itself from all stains of treason by excluding all participators in the insurrection. Not even the talented and distinguished Gallatin could obtain a seat until he disproved the charge of his having been identified with this hostility to the execution of the laws.

The second occurred some years afterward, and was claimed to have covered a wider field. A prominent Democrat of the State of New York, who had been elevated to the second office in the gift of the people, was charged with having set on foot an armed expedition for the purpose of dismembering the Union. Burr crossed the mountains to the Ohio river, fitted out his flotilla of boats, and floated down the Mississippi. The key-note of alarm was sounded, the President issued his proclamation, the officers of justice were quick upon his track; he was arrested, indicted, and tried. The trial, the most important of any in this country, was conducted on both sides with almost superhuman ability. Nothing on either side was left undone. It is the only case in the history of the Government in which the President left his seat to personally superintend the trial. For want of evidence, under the ruling of that, profound jurist and pure patriot, Chief Justice Marshall, Burr was acquitted, and with his acquittal fell all the indictments against those charged as accessory only in his guilt. No one ever doubted that if Burr had been legally convicted he would have made atonement to an outraged country with his life.

What Burr's real design was remains a mystery; and many innocent persons were doubtless implicated with him; some, perhaps, not so innocent. His expedition was fitted out, in part, in my own State; and among those induced to join him was John Smith, then a Senator in Congress from the State of Ohio. Smith was never tried by a civil tribunal, but, for his participation in the so-called conspiracy, was expelled from the Senate.

From these two incidents in history I deduce two things: first, the determination on the part of the Government to vindicate its authority and dignity by inflicting punishment upon such as have violated the law; and second, to expel from its councils such as have participated in treasonable designs. From these we learn the

duty of the Government generally and of Congress in particular; for these things have passed into history, and are not influenced by the opinions or prejudices of the present day; and it receives great force from the fact that both the justice and propriety have been approved by the American people for three quarters of a century. Placing ourselves upon these precedents, and relying upon the justice and wisdom of the past, we are not endangered by unexplored paths or the experiments of new adventures. Guarded by the wisdom and example of many Administrations, we but mete out to those of the present day the well-established law that in former times was administered to others for similar offenses, but of lesser magnitude.

How to secure the fruits of that victory and obtain a permanent peace is the question for solution. To admit such members of Congress as they would elect from the States lately in rebellion would secure neither, but lose us both, and we should permit them to gain everything, through congressional action, that they sought to accomplish by arms.

It is claimed that we have no right to exclude their Representatives. I think we have. We do not want another war, and we would be faithless if we did not secure such guarantees as would last through all time. If they have given up the idea of rebellion, they can assure us such guarantees as will secure them in their right of representation and the country in harmony forever. We should exact nothing of them unjust or inconsistent with reason, but we should insist upon that well-recognized principle that maintains in every civilized country, that the highwayman, burglar, and pirate are not fit to sit as administrators of the law.

Those who engaged in the rebellion and strove to overthrow the Government, of their own volition withdrew their allegiance, are not fit, without bringing fruits meet for repentance, to administer its affairs. The foreigner who comes to our shores because he loves our institutions and admires our form of Government, who never, by word or act, evinced hostility to it, is put upon five years' probation before we admit him to citizenship. The reasons that exclude him from citizenship are strengthened in excluding open and avowed traitors. Decency would demand from them at least modesty. They have committed a crime that in any other country they could expiate only with their lives; they ought now to rejoice that by five years of fasting and prayer they could regain the rights of citizenship. From the instances I have given no one who had done an act hostile to the Government ever after participated in its affairs, and no one who was suspected was permitted to hold any position under it until they had cleared themselves of all imputations, and proved their allegiance by a renewal of the covenant of their faith. Even Burr, one of the most ambitious of his day, lived and died in obscurity, declining all marks of distinction, and avoiding all political notoriety. And the instigator of the whisky insurrection chose to be an exile in the land of strangers, and never sought position under a Government against which he had made war. But that kind of delicacy is not a characteristic of the rebels of this day. Their acts of treason, of cruelty, and barbarity are urged as qualifications for political positions. Already the most prominent places in the rebel States are filled with the most virulent traitors. And scarcely had the smoke of battle cleared away, and the shout of victory died out on the air, before the vice president of the confederacy is demanding a seat in the United States Senate. Such impudence is without a parallel among men, and can only find a precedent in the temptations of the devil to the Son of Man.

That the rebels are conquered, is an admitted fact. That they have any loyalty, any love, for the peace of the country and permanency of the Government, is not manifested by anything they have done. It is true they say they accepted the situation, so does the culprit. They say they laid down their arms. But their arms were forced from them. They say they disbanded their armies, but their armies were captured or scattered by the Union forces. Then what have they done to prove their submission to the law? They have neglected to pay their portion of taxes; they have expelled loyal citizens from the South; they have treated with brutality the freedmen, and enacted laws disgraceful to a Christian age or a Christian people. Those who engaged in the rebellion are as disloyal to-day as they were at any time during the war. Will any one pretend that they have changed? Will any one with truthfulness assert that they have any love for the Government of the United States, and would they not at any time rebel if there was a prospect of success?

In my judgment three things are necessary to be done before we can with safety restore them to their former relations with the Government:

1. Equal and just representation.
2. Security of life, liberty, and property to all the citizens of all the States.
3. To reject all debts or obligations incurred in aid of the rebellion.

The ratification of the constitutional amendment changed the condition of representation and rendered an

amendment to the Constitution necessary in order to equalize the just basis of representation. Under the Constitution as it now stands they would count the entire population in the southern States. Before the Constitution was amended, they counted the entire free population and three fifths of the slaves; but there being now no slaves they would count all. In none of those States do they confer the right of suffrage on the colored population. This presents the anomaly of allowing five million white rebels to represent four million loyal blacks, and makes two white persons—rebels at that—in South Carolina equal to five white loyalists in Ohio, Pennsylvania, or New York. To this unjust demand I cannot and will not yield. If all other objections were removed, that one would be a justification for rejecting their Representatives. I could not return to my own gallant State and say to her loyal people and to the three hundred thousand gallant sons she sent to the field that by my vote I had reduced their political power until it required five of these scarred veterans to equal two of the rebels against whom they fought.

If South Carolina persists in withholding the ballot from the colored man, then let her take the alternative we offer, of confining her to the white basis of representation, and instead of the seven hundred thousand, her entire population, let her accept the two hundred and ninety thousand white population as the basis of her representation. For my purpose this sufficiently illustrates the operation of the rule, and the only practicable remedy is in an amendment to the Constitution changing the basis to the voting population, and making that a condition-*precedent* to the admission of Representatives from the insurgent States. But it is said we should admit their Representatives, and if they are not loyal, turn them out. I hope we shall not be deceived by such a trick as that. Some of us have had experience in expelling a member. If Georgia was to send her Toombs here as a Representative, or Kentucky her Breckinridge, both gory with the blood of our murdered soldiers, both ardent supporters of the rebellion in every stage, supporting in every way, and when conquered, and its failure no longer a question, they would not risk their safety in this country, but sought refuge in Europe, not one vote on the other side could be had for their expulsion.

But how are members admitted here? By producing a certificate of election to the Clerk, who makes up the roll, calls it himself, and prepares them for qualifying. Much, then, depends upon the Clerk in the organization of the House. He could exclude them if he desired so to do. The experience of Congress has taught us to beware of dangers from Clerks of their own selection. I heard of a Clerk once who decided that a certificate, setting forth that a person was duly elected a Representative, did not prove that he was elected according to law. As an apology for his fine-spun theory it was said he had partially lost his reason; but I think he had suffered, if possible, a worse calamity than that. He had united his fortunes with the disunionists, enough certainly to drive any man mad. When the Clerk makes up his roll, calls the members, they take the oath, how are you to get them out of their seats but by expulsion, which requires a two-thirds vote.

Let us look at this matter in its practical operation. Suppose we admit the Representatives from the rebel States, and the bloody General Forrest should be returned a member, who produced his certificate of election, was placed on the roll, answered to the call, and took the oath; could you expel him on account of his treason? Certainly not; unless you could expel all the rest from the insurgent States, and that you could not do. And it would be the merest folly to attempt it. It would then become a political question. The Democratic party would then all be here—the open rebels of the South, the three hundred thousand Knights of the Golden Circle, the sympathizers of the North; the prisons would be emptied, the gallows cheated, the Canadian refugees would be called home, and if that was not enough, they would resurrect the conspirators and call from the tomb of infamy the murderers of the Andersonville prisoners. Then they would have a Democratic party strong enough in this Hall to prevent the expulsion of one of their number. As to the provision disfranchising those who have participated in the rebellion, it is objected to, first, for want of power, and second, on the ground of expediency. Neither, in my judgment, are sound. As to the first, I have no doubt of the power under the Constitution as it is. Such is and has been its interpretation from the foundation of the Government. Under a congressional act persons convicted of a crime against the laws of the United States, the penalty for which is imprisonment in the penitentiary, are now and always have been disfranchised, and a pardon did not restore them unless the warrant of pardon so provided.

The second is equally unsound. It was formerly doubted whether it was expedient to restore the elective franchise to those who had been convicted of a crime. The objection rests upon the ground that the number to be disfranchised are so numerous. This is greatly exaggerated if we take as true what is said by southern men, for it is seldom you can find one who has not been opposed to secession and in favor of the Union all the time. Whether this be true or not it should be no argument against it. The reason for it proceeded upon the ground of self-preservation, by protecting the elective franchise and keeping it pure. Others may desire to make up a party, or to

strengthen one already made, by incorporating in it the worst kind of criminals; but it will destroy the object and purpose of the principle referred to. I have no desire, and should take no pride in any such political association. And the country certainly derives no security from such political organizations. But suppose the mass of the people of a State are pirates, counterfeiters, or other criminals, would gentlemen be willing to repeal the laws now in force in order to give them an opportunity to land their piratical crafts and come on shore to assist in the election of a President or members of Congress because they are numerous? And let it be borne in mind that these latter offenses are only crimes committed against property; that of treason is against the nation, against the whole people—the highest known to the law.

The only objection I have to the proposition is that it does not go far enough. I would disfranchise them forever. They have no right, founded in justice, to participate in the administration of the Government or exercise political power. If they receive protection in their

persons and property, are permitted to share in the nation's bounties, and live in security under the broad aegis of the nation's flag, it is far more than the nation owes them.

Looking at the desolated fields of the South, the beggarly condition of the people, the army of maimed and helpless rebels, and the demoralized state of society, they must be the most stupid people in the world or they would ask to have them disfranchised themselves, and every loyal southern man does that. Nay, they should place them under such disabilities that they never could exercise political power again. The whole North is full of loyal refugees who do not dare return to their former homes. If they happen to have property there it is destroyed by those persons you propose to continue in power. Reject the amendment disfranchising rebels and you must widen the asylum in the North for those southern people who have sympathy with the Government. Let us have the courage to follow the example of the loyal people of Tennessee and Missouri, and exclude them from the ballot-box. Ask the gallant men of Tennessee what security they would have if the provision disfranchising rebels was repealed. They would tell you they would be overrun by rebels, and that the forty thousand gallant men who battled for the Union would be prostrated at the mercy of these disarmed traitors.

Let us now turn to the North and ask the million of gallant men who for four years stood like the mailed hosts of old between the nation and its destruction, and vanquished and drove back these hirelings of crime, and they will answer you, no rewards for treason. Ask the maimed and disabled soldier, and he will tell you that he did not think he was giving his leg or his arm to a Government whose representatives would vote away his political rights. Ask the widow, and in tears she will turn to her children and tell you that she was widowed, they were orphaned, they inherited poverty, she struggled in want, but she did not suppose that all this was to confer the power of the Government upon the murderer of husband and father. Ask the whole loyal people of the North, and you will receive for answer that you endanger the peace of the country by trusting the ballot in the hands of the traitor.

Mr. Speaker, I have not time to trace this subject further. I hope the report of the committee will be adopted; and in conclusion let me say to the one hundred and forty thousand people I have the honor to represent, that if they desire to have the rebels admitted into this House and the ballot placed in the hand of the traitor, they must select some other agent than me, for, so help me God, I will never vote to admit unconditionally a rebel Representative to a seat in this Hall or to place the ballot unrestricted in the hands of the traitor. In that way I shall contribute in rendering "treason odious."

Mr. LONGYEAR. Mr. Speaker, the questions before the House are not so much whether the rebellious States are in or out of the Union; or whether the Government has or has not the right to impose conditions upon their return to working relations with it. Those questions have already been settled by the uniform action and declarations of the executive, legislative, and judicial branches of the Government.

The Supreme Court, as long ago as 1862, declared, in the decision of the prize cases, (2 Black's Reports, 636, 667,) that "the present civil war between the United States and the so-called confederate States has such character and magnitude as to give the United States the same rights and powers which they might exercise in the case of a national or foreign war;" and, quoting Vattel for authority, the court further declared that "a civil war breaks the bands of society and Government, or at least suspends their force and effect."

The Thirty-Eighth Congress, at its first session, and while the war was still flagrant, by solemn enactment declared the State governments in those States subverted and overthrown, and imposed conditions upon their reconstruction. This enactment most unfortunately did not receive the signature of the President, although he approved of all its provisions in the proclamation which he issued soon after its passage. The same thing has been

assumed and acted upon by Congress and by each House in numerous other enactments and resolutions since that time, many of which received the sanction of the late President Lincoln.

The present incumbent of the presidential chair, while he remained the Andrew Johnson of Tennessee for whom the great loyal masses of the nation gave their suffrages for Vice President of the nation in 1864, both before and since his elevation to that position, ay, and since by the hand of treason he became elevated to be the chief Executive of the nation, has declared that all government in those States and in each of them had ceased to exist; and not only that, but that the right to regulate suffrage and to impose conditions in the efforts of those who had been in rebellion to reconstruct State governments existed in the national Government. I will only quote a single but oft-repeated declaration of President Johnson upon this point. In each of his famous proclamations appointing provisional governors for the several States in rebellion, occurs this remarkable passage:

"Whereas the rebellion which has been waged by a portion of the people of the United States against the properly constituted authorities of the Government thereof, in the most violent and revolting form, but whose organized and armed forces have now been almost entirely overcome, has in its revolutionary process deprived the people of the State of [North Carolina, &c.] of all civil government."

The President in each of those proclamations also assumed to regulate suffrage and eligibility to office, as follows:

"Provided, That at any election that may be here-after held for choosing delegates to any State convention, as aforesaid, no person shall be qualified as an elector, or shall be eligible as a member of such convention, unless he shall previously have taken and subscribed the oath of amnesty as set forth in the President's proclamation of May 29, 1865, and is a voter qualified as prescribed by the constitution and laws of the State of [North Carolina, &c.,] in force immediately before the 20th day of May, 1861, [or otherwise as the case was,] the date of the so-called ordinance of secession."

These declarations and acts of the present Executive were made and done, too, after active hostilities had ceased, and the armed force of the rebellion had surrendered to or been broken and dispersed by the superior force of the national Government, events upon the happening of which it is contended by the advocates of State rights here and elsewhere the States in rebellion at once resumed all their rights as States of the Union, including, of course, the right of representation in Congress and the right to regulate suffrage and office in their own way.

Without stopping, then, to discuss these questions upon principle, I assume, as proven by authority of all the coordinate branches of the national Government, the following propositions:

1. That as a result of the rebellion, all civil government was destroyed in those States which were engaged in it.
2. That the people of those States can erect new State governments only by virtue of the authority and consent of the national Government, and upon such terms and conditions as the latter may prescribe.
3. And in this connection the national Government may regulate suffrage and eligibility to office, and make and establish such other regulations as may be necessary for its future security and perpetuity.
4. And it makes no difference in this respect whether such regulations are established by statute or by constitutional amendment. The loyal people who, by their Representatives and Senators constituting the Congress for the time being, have the power to propose constitutional amendments and enact laws for the common welfare, have equal power through their Legislatures or conventions to ratify and make effectual such constitutional amendments.

He who attempts to argue against these propositions does so against the uniform current and logic of the swift-passing events of the last five years and their inevitable sequences, and will find all his high-sounding rhetoric return to him empty, like echo from adamantine cliff in a desolate forest.

I do not propose to discuss the question here whether the power to prescribe such regulations and conditions is in the Executive or in the Congress. I believe it is in Congress. The people believe it is in Congress, and the great masses of the loyal people both North and South are looking to Congress to-day for protection and security; and for one, I intend to do my duty toward them in that respect to the best of my ability.

The only question really open for discussion is, what regulations and conditions are necessary; and what shall be imposed to insure the future domestic tranquility of the people and the security and perpetuity of our national existence?

The amendments and bills reported by the committee on reconstruction fall far short of the expectations of the people, and I may say are short of what I may have desired. The fact is the people are always ahead of their legislators in all matters of reform. But so far as the report goes it is in the right direction, and I will not reject it for the sole reason that it does not go far enough. The constitutional amendment proposed by the committee, with

a single objection, meets my hearty approval. That objection is to the third section, and it is not that it does not go far enough, nor that it goes too far, but that it comes too late. I would disfranchise every voluntary rebel in the land, and place him where the late Andrew Johnson of Tennessee, at a time when the patriotic predominated over the sinister elements of his nature, said he should be placed, "on the back seats" in the great work of restoring the body-politic to health and vigor. But that same Andrew Johnson, acting as President of the United States, and under authority, too, of an act of Congress has, in my opinion, placed it beyond our power to do this without a violation of the faith of the Government in the eyes of the whole world.

What is the case presented? Section three reads as follows :

Until the 4th day of July, 1870, all persons who voluntarily adhered to the late insurrection, giving it aid and comfort, shall be excluded from the right to vote for members of Congress and for electors of President and Vice President of the united States.

"All persons who voluntarily adhered," &c. Let us see what persons are included in this expression. It would seem that the word "all" is sufficiently comprehensive and can admit of no exceptions; but let us see if its use here is not delusive under the circumstances now surrounding the question. By authority of law, full pardon and amnesty have been granted-

1. To all rebels below a certain rank who should take a certain oath, &c.

2. To all below the rank of colonel who were worth less than \$20,000 at the commencement of the rebellion.

This included, of course, the great mass of the southern people.

3. Nearly all of the classes above excepted have since received special pardons, and what remain are being pardoned now day by day, and before the proposed amendment can become part and parcel of the Constitution there will probably not be left a single unpardoned rebel in the whole land, from the highest to the lowest.

In the light of the events of the past five years, and of the fiendish barbarism practiced by these rebels during hostilities, and of the devilish hate still rankling in the bosoms of the great mass of them toward the Union and toward loyal men, these are humiliating facts; but still they are facts, and we must face them and not stultify ourselves in the eyes of the world by ignoring them.

Amnesty and pardon, although not strictly synonymous terms, have been used as such in this connection. Amnesty has the effect "to efface the crime and cause it to be forgotten."

This is the language of the authorities, and this the effect that has always been given to it by all civilized nations. It not only exempts the party from punishment, but remits him to all his former rights, natural, civil, and political, with simply two exceptions: first, where rights of third persons have intervened; and second, where the disability has been created by statute, and existed at the time of pardon. I concede that if the disability now proposed to be created had existed by the Constitution or by statute at the time of amnesty granted, it would remain until removed by the same formalities; but who ever heard of any civilized nation affixing to an offense a punishment or even a disability after the crime itself had been effaced, wiped out, obliterated by an amnesty or a pardon?

The eminent gentleman from Pennsylvania, the chairman of the committee on the part of the House, who reported this amendment, taking the same view of the law of the case as I do, tells us in effect that the disability is not intended to apply to such as have received pardon and amnesty. He tells us that if the amendment is adopted and becomes part of the Constitution, and one of the amnestied rebels comes to the polls and offers his vote for member of Congress, &c., and shows his pardon, then he has not adhered, &c., and is not included in the expression, "all persons who have adhered," &c. This is no doubt correct; but let me tell the gentleman that in this view of the case the amendment is meaningless, yes, worse than meaningless, it is cause of discord among the friends of the balance of the amendment, where the utmost harmony should be cultivated. If adopted, it would not stand in the way of a single rebel ballot. Long before it can be adopted, every one of the few unpardoned rebels now remaining will have received the extreme unction of pardon by his Excellency the President of the United States, and will have become a voter by the side of the most loyal, notwithstanding the prohibition. It would be a dead letter.

The provision would also be so easily evaded by appointing electors of President and Vice President through their Legislatures, as South Carolina has always done.

Let us then reject this dead weight, and not load down good provisions, absolutely essential provisions, by this, which, however good in and of itself, cannot be enforced.

I regard this provision, if adopted, both worthless and harmless, and therefore I shall vote for the proposed amendment as a whole, whether this be rejected or retained. I am heartily in favor of the whole amendment,

except this section three, and should be in favor of that if I thought it could be given any effect; and I have said this much because of my anxiety that the main provisions of the amendment should prevail, and not be jeopardized by the retention of a worthless provision.

Rebels must be taken care of here in the Halls of Congress; and so long as the loyal people of the country remain true to themselves and the Government, traitors will be taken care of here. The sword of justice will continue to hang over the portals of these Halls, and no traitor will be allowed to pass their thresholds.

Mr. BEAMAN. Mr. Speaker, to say that I am not entirely satisfied with the plan for the reconstruction of the rebel States reported by the committee is probably to utter the sentiment of nearly every member of the House, including the members of that committee. It is most likely, also, that the expectation of the country will be somewhat disappointed. Mindful of the terrible struggle through which we have just passed, with all its sad incidents, the people are naturally earnest, anxious, and watchful. Impressed with the former teaching of your Chief Magistrate, they have come to believe that treason is crime, and ought to be punished; and that in any plan adopted for admitting the people of the rebel States to a participation in the government of the country, ample safe-guards will be provided for future security.

Sir, I feel compelled to say that I do not think the report of the committee quite meets their just expectations. Nevertheless, so various are the views of gentlemen of the House, as well as of the individual members of the committee, perhaps it is as nearly satisfactory as any system that could have been agreed on with any well-founded hope of adoption. I am inclined, therefore, to support the joint resolution, though I hope it may be amended. I have serious objections to the third section, and I shall experience regret if, through the inflexibility of parliamentary rules, I am compelled to vote upon the original resolution without an attempt to amend it. It seems to me that the third section will be found useless in its results and impracticable in its operation, while it is calculated to foster irritation and bad blood among the people of the South. It makes a show on the face of it of accomplishing what it is impotent to perform; that is to say, it assumes until the 4th day of July, 1870, to "exclude all persons who voluntarily adhered to the late insurrection, giving it aid and comfort," from the right to vote "for electors for President and Vice President of the United States," yet we very well know that such a provision would be entirely inoperative, because electors for President and Vice President can be appointed by the Legislatures according to a practice that has always obtained in South Carolina. The provision does not extend to the election of Senators, and consequently it can operate only to affect the election of members of this House, and that only for a period of four years.

The State governments, the inspectors of election, the rejection or reception and canvassing of votes, the returns and certificates, in short the whole machinery of the elections will be in the hands and under the control of the very men whom you propose to disfranchise, and the difficulties that will arise in an attempt to execute the law are too obvious to require particular specification. This section looks as though it was intended for ornament rather than for use. Perhaps I should say it has the appearance of having been introduced to multiply the conditions of restoration, thereby rendering the scheme somewhat more imposing. It was doubtless the offspring of compromise, the result of a contest of adverse opinions, in which each one of the progenitors gave up so much of his paternity that the bantling is a mere shadow. It is, however, a shade too thin to blind the eye, and it might as well be removed altogether. The people are not likely to be blinded by so thin a veil, and it is folly to undertake to deceive ourselves. The people do not stand on punctilio. They want no expedient adopted in order to gratify their vanity, or to save a point of honor. They desire the adoption of no measure whose sole object is to assert their power over the rebels; that has already been established in the clash of arms. They want protection and security for the future, and to that end they believe it indispensable that the Government should be administered by loyal hands.

I do not know as there will be an opportunity to offer amendments to this joint resolution; but if permitted, I shall move to strike out the third section and insert in lieu thereof a section which I have taken in substance from the bill introduced from the committee by the gentleman from Pennsylvania. The provision which I would have inserted is, as follows:

Sec. 3. No person shall hereafter be eligible to any office under the Government of the United States who is included in any of the following classes namely:

- 1. The president and vice president of the confederate States of America so called, and the heads of departments thereof.*
- 2. These who in other countries acted as agents of the confederate States of America so called.*
- 3. Heads of Departments of the United States, officers of the Army and Navy of the United States, and all persons educated at the Military or Naval Academy of the United States, judges of the courts of*

the United States, and members of either House of the Thirty-Sixth Congress of the United States who gave aid and comfort to the late rebellion.

The disability proposed by this amendment is quite inconsiderable, if we have regard to the magnitude and consequences of the late rebellion, and I have no doubt it falls short of the public expectation. But inconsiderable as it is, it would at least prevent the intrusion of the arch traitor Jefferson Davis into the Senate of the United States, and would exclude permanently from this Hall the rebels who left it in 1861 for the field of blood. Nor could such a measure be deemed objectionable by any candid mind, whether it be regarded as a question of security for the future or as a punishment for past offenses. What other nation on the face of the earth would be so merciful, so forgiving? These men, by their flagitious crimes, have created a mortgage of billions upon the property of posterity that is to be. They have murdered hundreds of thousands of their fellow-men, and endangered our national existence. They have forfeited citizenship, property, life, which justice refuses to restore. But we forget justice and remember only mercy. We give them back life, property, citizenship. And is not this enough? Shall we restore them to power and make them our rulers? Such a determination should be preceded by another amendment to the Constitution. The word treason should be expunged from our organic law.

Mr. Speaker, I have little more to say. My views in regard to the great subject of reconstruction have been expressed in this Chamber more than once, and I do not wish to repeat them. But I desire to say that in my judgment the remainder of the joint resolution has great merit and ought to be adopted. I did look for more thorough and reliable protection for the loyal men in the rebel States than we are likely to secure. I did hope to see the rights of the freedmen completely established. I did believe that we should not ignore the services of the brave colored men who heroically bled in the defense of their country—a country from which thus far they have received injuries rather than blessings—and I did hope that a just, if not a grateful country, would insist that the preservers of liberty should enjoy some share of its fruits; that we should have the manhood and magnanimity to declare that men who have wielded the sword in defense of their country are fit to be intrusted with the ballot. But I am convinced that my expectations, hitherto fondly cherished, are doomed to some disappointment.

Yet I take this occasion to place on record the assertion, that if this generation shall fail fully to perform the duty that Providence seems to have imposed upon it, the blame will not rest wholly upon the Thirty-Ninth Congress. Every measure adopted for the security of the people against rebels must be carried by a two-thirds vote of each House. Against an antagonistic Executive a majority of Congress alone cannot adopt legislation needful to the condition of the country.

But I will not on this account abandon all. I will accept of the best arrangement available. I will vote for the substitute I propose, if I have an opportunity. I will vote simply to strike out the third section, if I can do no more; and failing in that, I will vote for the joint resolution as it stands.

Mr. ROGERS. Mr. Speaker, I have listened to the arguments made by the honorable gentlemen upon the other side; and out of five or six to whom I have attentively listened, only one has treated the minority on this side of the House with common courtesy or common respect. I am sorry that a grave and important question like this cannot be discussed by the representatives of the people of this country without indulging in vile vituperation of those who happen to disagree with the majority. Sir, I honor the distinguished gentleman from Massachusetts [Mr. BANKS] for the manner in which he has always treated us on this side, and for the ability with which he has discussed the questions which have come before this House for consideration. Sir, I think it is belittling the character of this House for a gentleman of such high standing and of so much intellect as the honorable gentleman from the Lancaster district of Pennsylvania [Mr. STEVENS] to commence his argu-

ment by charging us here with being nothing but "catamounts." Such a method of treating these great questions will not settle the present difficulties of the country, nor heal the bleeding wounds of the Republic. Such a course of proceeding will not bring back our country to the enjoyment of the blessings of civil liberty and those great principles of constitutional freedom for which our revolutionary fathers fought.

Sir, I had hoped that after the investigation we have had upon the different subjects which have agitated this Congress, the time had come when gentlemen upon both sides of the House would turn their hearts from bloody strife to a contemplation of the blessings of peace and union in this land.

I do not mean, sir, as is now proposed by the measure under consideration, to have peace by disunion, but I mean to have peace by restoring and referring to the instrumentalities by which the Constitution and the Union were first established by our fathers; and I believe, if these instrumentalities, which were founded in a spirit of compromise, charity, friendship, love, and affection, were employed in this House, the bonds which have been

torn asunder by four years of bloody war will be again cemented together.

I believe while I am here sustaining the opposition to this joint resolution, I am fortified by one who holds the reins of power in the presidential chair, a patriot and statesman, a man whose whole ambition is to have back again that glorious Union, and the old flag with every star there emblazoned upon it the emblem of victory and of the unity of all the States, whether North or South. He wants all the States, as heretofore, to be represented in reference to the legislation of the country.

While the proposition which has been produced here is not so rabid as some of the propositions agreed to be submitted by this committee, yet I say that it is fraught with great danger and evil to the country, and the elementary foundations upon which the liberties of this union have rested for seventy-five years are about to be thrown down and trampled in the dust; and that glorious flag which was carried in triumph during the last war is about to be trampled under foot, and the time has arrived when Andrew Johnson and the Democratic party have determined to put that flag upon their shoulders and to plant it upon the dome of the State capitol of South Carolina, and to have it waving there as it is over the dome of the Capitol of the United States, representing a union of love and equal representation.

Now, sir, I have examined these propositions with some minuteness, and I have come to the conclusion different to what some others have come, that the first section of this programme of disunion is the most dangerous to liberty. It saps the foundation of the Government; it destroys the elementary principles of the States; it consolidates everything into one imperial despotism; it annihilates all the rights which lie at the foundation of the Union of the States, and which have characterized this Government and made it prosperous and great during the long period of its existence.

This section of the joint resolution is no more nor less than an attempt to embody in the Constitution of the United States that outrageous and miserable civil rights bill which passed both Houses of Congress and was vetoed by the President of the United States upon the ground that it was a direct attempt to consolidate the power of the States and to take away from them the elementary principles which lie at their foundation. It is only an attempt to ingraft upon the Constitution of the United States one of the most dangerous, most wicked, most intolerant, and most odious propositions ever introduced into this House or attempted to be ingrafted upon the fundamental law of the Federal Union.

It provides that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. What are privileges and immunities? Why, sir, all the rights we have under the laws of the country are embraced under the definition of privileges and immunities. The right to vote is a privilege. The right to marry is a privilege. The right to contract is a privilege. The right to be a juror is a privilege. The right to be a judge or President of the United States is a privilege. I hold if that ever becomes a part of the fundamental law of the land it will prevent any State from refusing to allow anything to anybody embraced under this term of privileges and immunities. If a negro is refused the right to be a juror, that will take away from him his privileges and immunities as a citizen of the United States, and the Federal Government will step in and interfere, and the result will be a contest between the powers of the Federal Government and the powers of the States. It will result in a revolution worse than that through which we have just passed. It will rock the earth like the throes of an earthquake until its tragedy will summon the inhabitants of the world to witness its dreadful shock.

I believe it will be, if that contest comes between Federal and State powers, a time when nature will bleed with agony in every part. That, sir, will be an introduction to the time when despotism and tyranny will march forth undisturbed and unbroken, in silence and in darkness, in this land which was once the land of freedom, where the sound of freedom once awakened the souls of the sons and daughters of America, when from the mountain-tops to the shore of the ocean they drank in the love of liberty.

I assert that the second section of this proposed amendment is unparalleled in ferocity. It saps the foundation of the rights of the States, by taking away the representation to which they would be entitled under the present Constitution. When the gentleman from Ohio [Mr. BINGHAM] brought forward a proposition from the committee on reconstruction to amend the Constitution of the United States, interfering with the elementary principles of taxation and representation, the principles for which our fathers fought when they rebelled against the tyranny of King George and the English Parliament who undertook to tax the people of the colonies without representation, the proposition was defeated in this House upon the ground that it would destroy a fundamental principle, that there should be taxation only according to representation.

This, sir, is precisely such a proposition as that. It declares that if the southern people refuse to allow the

negroes to vote, then all that portion of the male colored population of twenty-one years of age and upward shall be excluded in the basis of representation—shall not be counted in ascertaining how many Representatives the States are entitled to.

The honorable gentleman from Pennsylvania [Mr. STEVENS] has the frankness to state to the House what the object and purpose of the second clause are. He says:

"The effect of this provision will be either to compel the States to grant universal suffrage or so to shear them of their power as to keep them forever in a hopeless minority in the national Government, both legislative and executive."

Yes, gentlemen, it is but the negro again appearing in the background. The only object of the constitutional amendment is to drive the people of the South, ay, and even the people of the North, wherever there is much of a negro population, to allow that population not qualified but universal suffrage, without regard to intelligence or character, to allow them to come to the ballot-box and cast their votes equally with the white men.

Why do you not meet this question boldly and openly? Why do you undertake to deceive the people by offering to them an amendment which you say is based upon a principle of justice, that only the voting population shall be represented, when you admit by your leader in this House, the honorable gentleman [Mr. STEVENS] who introduced into the committee this whole scheme of disunion and despotism, that the object of this amendment is to force the southern States to grant to the negro unrestricted suffrage?

Sir, I want it distinctly understood that the American people believe that this Government was made for white men and white women. They do not believe, nor can you make them believe—the edict of God Almighty is stamped against it—that there is a social equality between the black race and the white.

I have no fault to find with the colored race. I have not the slightest antipathy to them. I wish them well, and if I were in a State where they exist in large numbers I would vote to give them every right enjoyed by the white people except the right of a negro man to marry a white woman and the right to vote. But, sir, this proposition goes further than any that has ever been attempted to be carried into effect. Why, sir, even in Rhode Island to-day there is a property qualification in regard to the white man's voting as well as the negro. And yet Representatives of the eastern, middle, western, and some of the border States come here and attempt in this indirect way to inflict upon the people of the South negro suffrage. God deliver this people from such a wicked, odious, pestilent despotism! God save the people of the South from the degradation by which they would be obliged to go to the polls and vote side by side with the negro!

Mr. KELLEY. Will the gentleman yield?

Mr. ROGERS. I am always willing to yield, but in a half-hour speech I cannot.

The committee dare not submit the broad proposition to the people of the United States of negro suffrage. They dare not to-day pass the negro suffrage bill which passed this House in the Senate of the United States because, as I have heard one honorable and leading man on the Republican side of the House say, it would sink into oblivion the party that would advocate before the American people the equal right of the negro with the white man to suffrage.

And I do not believe that the gentlemen who favor this amendment believe that a single proposition contained in it will ever be adopted by three fourths of the States. Why do you not do something practical? We have been here something like six months. We have labored, toiled, and endeavored to bolster up the remains of the old Union, and you come in at this late day of the session with a proposition which you know—and I put it to the conscience of any man on the Democratic or Republican side of the House—will never be adopted by three fourths of the States.

Sir, I want some principle embodied in a constitutional amendment that the southern States will accept. I desire to see the Union restored, the Union of our fathers. I want peace, prosperity, happiness, greatness, grandeur, and glory such as characterized this nation when the Democratic party had control. I want you to put such a proposition before the people as shall meet their approbation. Do not pretend that you are in favor of the unity of the States when you offer a proposition which every reasonable, honorable, conscientious man must know will never be adopted by the States. Do you believe the people of the South will close their eyes to the teaching of ages and wait for shackles and chains to convince them that their liberties are endangered and allow no awakening convulsions to shake their rugged minds until despotism shall eat out their vitals?

I am not unmindful of the lessons taught us by the despotism of the Old World. I remember Poland and Hungary, and I stand here protesting against this measure which is more wicked than the tyranny practiced upon them. I believe under God that Andrew Johnson will plant the flag of liberty on every hill-top of this land until the tidings shall go forth to the civilized world that the United States of America are united in one bright constellation

You come out with another proposition, in the third section, to disfranchise a million voters, and I think I can say with safety that a speech has not been made on the other side wherein something was not said in favor of the enfranchisement of the human race, and yet you come here to-day, in the face of heaven and this Congress, and undertake to enunciate a doctrine that will, if carried out, disfranchise seven or eight million people, and that will put them in a worse condition than the serfs of Russia or the downtrodden people of Poland and Hungary until the year 1870. It is an entire change of front. You have been all the time maintaining the principle of representation based upon the voting population, and now, when these people have been so unfortunate as to be burdened with a free colored race, in consequence of the sins of northern fanatics and secessionists, you propose to disfranchise seven or eight million who had no original participation in the matter.

Why, sir, the Scriptures tell me that when Christ came upon the earth the fallen world had been doomed to punishment for the commission of sin and had been assigned to eternal damnation. And I am informed by the same Scriptures that Christ gave His body, His blood, and His soul as a propitiation for the sins of mankind. Now, I ask you to emulate the noble example of the Saviour of the world. Let us treat our southern brethren like men, like freemen, like fellow-citizens. And we will have a laurel crown placed upon our brows, if not here, then in heaven, and we shall receive the plaudit, "Well done, good and faithful servants of the Republic."

There is no honor in standing here and abusing the southern people. The revolution through which we have just passed was such a revolution as Abraham Lincoln, when a member of Congress some years ago, said that the people had a right to engage in as an effort to throw off a Government they did not like and to establish another that they preferred. The people of the South attempted to revolutionize the Government; they arrayed large armies against the United States and failed. And if we had failed in our revolution against Great Britain I have no doubt there would have been found in the Parliament of that country radicals who would have urged against us what the radicals here urge against the people of the South.

Our people have shed their blood and spent their treasure in profusion to preserve this Union. The bones of our brave soldiers are now bleaching upon the soil of Virginia. I have not yet forgotten that the sacred tomb of Washington, around which our soldiers gathered and renewed their vows to preserve the institutions of liberty bequeathed to us by our fathers, is in the soil of Virginia, one of the States which a majority of the members of this Congress are trying to keep out of this Union.

Rebellion or revolution never has been considered by the civilized world, as having that odiousness and moral turpitude that attaches to men for the commission of heinous crimes. And when the honorable gentleman from Pennsylvania [Mr. KELLEY] undertakes to charge the great masses of the South as being murderers like Probst, he goes counter to the history of the world, and against the revolution which in the end gave Magna Charta to England, and which handed down to this country those bulwarks of liberty upon which our Declaration of Independence and our Constitution are founded. I say they are not murderers, they are not thieves, they are not felons; they are simply political convicts before the altar of patriotism. And the patriotic man who now sits in the presidential chair has, in the spirit of Christianity and humanity, extended to these men pardons, which I say, which the courts say, which tradition says, and which the history of the world says, relieve their recipients of all the effects consequent upon the crime.

Mr. KELLEY. As the gentleman has referred to me personally—

Mr. ROGERS. I cannot be interrupted, for I have but thirty minutes.

Mr. KELLEY. I have to say—

Mr. ROGERS. I cannot be interrupted.

The SPEAKER. The gentleman from New Jersey [Mr. ROGERS] is entitled to proceed without interruption.

Mr. KELLEY. As the gentleman misrepresents me—

Mr. ROGERS. I cannot yield.

Mr. KELLEY. And will not yield for an explanation.

The SPEAKER. The gentleman from Pennsylvania [Mr. KELLEY] is not in order and will take his seat.

Mr. KELLEY (taking his seat.) I must pronounce his statement false.

Mr. ROGERS. I say the gentleman must not come here and vilify the people of the South in this way by comparing them with murderers, and by bringing in the argument that they are as deserving of reprobation and punishment as the monster Probst. I say the masses of the people in the South are not to blame for this war at all. It was the leaders of the South, such men as Yancey and others there, and the fanatical demagogues of the North,

some of whom the President has named, (I of course except those upon this floor,) who are guilty of this war.

Sir, you can never win the affections of any people by treating them in the manner in which you propose to treat those people by these measures. The gentleman from Pennsylvania [Mr. STEVENS] is an honest man; I give him credit for that, for I have taken particular notice and studied his caliber, and I believe he is honest in his opinions.

Yes, sir, the honorable gentleman [Mr. STEVENS] says that these persons can come in after the 4th of July, 1870. This resolution does not guaranty any such thing. We must refer to the bill with which the committee accompany the resolution. That bill provides that every State in this Union that is now unrepresented must, before being allowed to have Representatives here, even though they can take the test oath, ratify this constitutional amendment. Though this constitutional amendment should be ratified by three fourths of the States, not one of the eleven States now unrepresented can have representation here unless each State itself joins in ratifying it. Is that fair? It has been said by the honorable gentleman from Pennsylvania that nineteen States — three fourths of those that have never passed acts of secession—are sufficient for the ratification of this constitutional amendment. Why, then, do you seek to compel each of the southern States to ratify the amendment and alter its constitution and laws in conformity thereto, before you will admit here, on taking the usual oath, such honorable and loyal men as are now presenting themselves as Representatives from the State of Tennessee and the State of Arkansas?

Mr. FARNSWORTH. Mr. Speaker, in my half hour I shall confine myself to the amendments of the Constitution now under consideration. When the bill reported by the committee of fifteen comes up for action by this House I may desire to say something in regard to it.

I intend to vote for this amendment in the form reported, with the exception of the third section. It is not all I could wish; it is not all I hope may yet be adopted and ratified; for I am not without hope that Congress and the people of the several States may yet rise above a mean prejudice and do equal and exact justice to all men, by putting in practice that "self-evident truth" of the Declaration of Independence, that Governments "derive their just powers from the consent of the governed," and giving to every citizen, white or black, who has not forfeited the right by his crimes, the ballot. But I do not think it is becoming in a legislator to oppose some good because the measure is not all he wants.

The first section of the amendment proposed is as follows:

Sec. 1. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of its laws.

So far as this section is concerned, there is but one clause in it which is not already in the Constitution, and it might as well in my opinion read, "No State shall deny to any person within its jurisdiction the equal protection of the laws." But a reaffirmation of a good principle will do no harm, and I shall not therefore oppose it on account of what I may regard as surplusage.

"Equal protection of the laws;" can there be any well-founded objection to this? Is not this the very foundation of a republican government? Is it not the undeniable right of every subject of the Government to receive "equal protection of the laws" with every other subject? How can he have and enjoy equal rights of "life, liberty, and the pursuit of happiness" without "equal protection of the laws?" This is so self-evident and just that no man whose soul is not too cramped and dwarfed to hold the smallest germ of justice can fail to see and appreciate it.

The second section of the amendments proposed is as follows:

Sec. 2. Representatives shall be apportioned among the several States which may be included within this Union according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But whenever in any State the elective franchise shall be denied to any portion of its male citizens not less than twenty-one years of age or in any way abridged, except for participation in rebellion or other crime, the basis of representation in such State shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens not less than twenty-one years of age.

I like this better than the one this House adopted some time since, and which was defeated in the Senate. That amendment I declared then, as I do now, that I did not like. It received my vote in common with many other members of this House, but with hesitation, doubt, and protest. I will not reiterate the reasons now; but, sir, I have no sympathy with nor approval for the denunciations which the gentleman from Pennsylvania [Mr. STEVENS] has seen fit to hurl at those Senators who differed with him and defeated the adoption of that amendment. I rather admire their patriotism, their courage, and their sense.

The amendment, however, now under consideration is free from what I considered the most objectionable

features of the other.

The Constitution now provides for the apportionment of Representatives according to the "whole number of free persons" and "three fifths of all other persons." Consequently, before emancipation, three fifths of the slaves were enumerated, which gave to the slave States nineteen Representatives in Congress, and as many electors of President, based upon a constituency of slaves alone. But now there are no "other persons;" all are free; and when the other two fifths are added in the enumeration they will give the late slave States thirteen more Representatives and electoral votes than before, making thirty-two Representatives and electors for the four million emancipated slaves. Now, this amendment says to those States this: "If the freedmen are so degraded and ignorant as to be unworthy of enfranchisement; if they are not capable of governing themselves, but must be held in subjection to and governed by their late masters, then they are not fit to govern the country through the votes of others." They shall not by any such prestidigitation, be dead at the ballot-box, but alive here, dumb, without a voice for their own government, and with thirty-two voices on this floor, and thirty-two votes for President and Vice President. They shall not be used to swell their rebel masters into giants and dwarf the loyal and patriotic men of the free States into Tom Thumbs! If you deny to any portion of the loyal citizens of your State the right to vote for Representatives you shall not assume to represent them, and, as you have done for so long a time, misrepresent and

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oppress them. This is a step in the right direction; and although I should prefer to see incorporated into the Constitution a guarantee of universal suffrage, as we cannot get the required two thirds for that, I cordially support this proposition as the next best.

This amendment, too, I fully believe, will in a reasonably short period bring universal suffrage.

The fourth section of this amendment, repudiating the rebel debt and claims for slaves, will be most heartily adopted and approved by every loyal man in the nation. Every man or woman who holds a Government bond, or who pays a tax, every crippled soldier or widow of a dead soldier, who holds a pension certificate, and everybody who hates treason and rebellion, and prays for the prosperity of the Government, will rejoice at its adoption.

The third section excludes all persons who voluntarily adhered to the rebellion giving it aid and comfort, from the right to vote for members of Congress, and for electors for President and Vice President until the 4th of July, 1870. I cannot regard this section as of any practical value. I believe it to be difficult, if not impossible, of fulfillment; and I have fears that it may greatly embarrass, if not defeat, the adoption of the other sections should we pass it through this House.

If the rebels are to be disfranchised at all, they should be for a longer period. Again, some rebels are deserving of a total and lasting disfranchisement, while others who are embraced in this provision are not near so criminal. But such a provision would be taken to imply that all shall have the right to vote after July, 1870. Besides, there is a large class of men, both in the North and South, equally, yea, and more, guilty than thousands of the misguided men who will be disfranchised by this provision, who will not be affected by it. I allude to those politicians and others at the South who, keeping themselves out of danger, set on the ignorant and brave to fight for what they were told by these rascals were "their rights;" and to other politicians, editors, "copperheads," in the North, some of whom were and are members of Congress, who encouraged them and discouraged our soldiers.

How is it to be ascertained who "gave aid and comfort" to the insurrection? Is it by challenge and oath at the polls, or shall we have a registration throughout the United States with officers to settle and adjudge that question as to every voter? It seems to me, Mr. Speaker, that this provision is worse than useless, and will very much mar the beneficent effect of the other most excellent provisions of this amendment. Why, sir, the almost universal testimony from the rebel States is that the soldiers who fought us in the field accept their situation of "defeated and vanquished" with a much better grace than the politicians and non-combatants. They do not want to fight again. They are inspired with a wholesome respect for northern character and for the Government. They have ceased their bragging, and are willing to accept the position which the results of the war has placed them in.

Then, with the exception of the third section, I am heartily for the amendment, and if instead of that section we could incorporate a provision into the Constitution which should forever disqualify all the leading rebels from holding any office under the United States, thus making "treason odious" and traitors infamous, the country would hail it with joy.

But, Mr. Speaker, there are men in this House who are opposed to making any amendments to the Constitution, as they say, "until the revolted States are represented here." They say that those States are entitled "of right" to have their Senators and Representatives in this Capitol. They say that it is wrong to enact any

legislation affecting those States without first "consulting them." This is the pretense. The real fact is they know very well that if each of those States had its two Senators in the other end of the Capitol, and the members which the present basis of representation gives them in this end, amendments would be impossible, for their votes, added to those already here, who have been upon their side throughout the war, will always prevent their adoption.

What would be the result in such a case? Mr. Speaker, I tremble for my country when I contemplate the possibility of such a conclusion to the bloody struggle we have gone through. Let me enumerate some of the calamities which will follow:

1. There would be the admission to Congress, and other places of power, of unrepentant and unwashed murderers and traitors.

2. The driving from their borders of every loyal man and woman who has been faithful to the Government.

3. Repeal of the civil rights bill, and grinding to the very depths of misery, compared with which slavery would be a boon, the four million freedmen.

4. Assumption by the General Government of the rebel debt, and payment to rebel masters for their slaves.

5. They would extend the pension laws to embrace the traitors who fought against the Government, and would pay the claims of rebels for damages by the war.

6. They would elect for the next President not Andrew Johnson, as some suppose. but Robert E. Lee, who might possibly reward his northern friends by giving places in his Cabinet to Fernando Wood, of New York, and Vallandigham, of Ohio.

Such is the picture. Why, sir, rather than such a consummation, a thousand times rather that we had never pulled trigger or drawn sword to maintain the integrity of the Government. Better, a million times better, that we had saved the blood its preservation has cost us. Why, sir, the very bones of the uncoffined dead would turn in their graves at such a result of their sacrifice. I know, and with shame confess it, that there are recreants and apostates among us, not many, I thank God, however, but some there are now in Congress, who have been trusted by an honest and confiding constituency, but who prefer to bask in the sunshine of executive favor, who rather "crook the pregnant hinges of the knee where thrift may follow fawning," and betray their trust; but their number is small.

The tribe of Judas has never been a very flourishing one, for those who do not, like Judas, in remorse hang themselves; very soon wither under the scorching indignation of mankind. There are not enough of them, I trust, to defeat what is absolutely demanded by the country. And the country does demand that we ingraft upon the organic law of the nation, placing them in the custody of the whole people, beyond the reach of party or faction, or of sudden passion, to repeal them, these or similar and stronger amendments. The preservation of the Government requires it. The rights and liberties of the loyal poor cannot be preserved without it. The financial credit of the Government will be ruined unless it is done. These things to me seem inevitable.

But those gentlemen upon the other side of the House, whose vocation seems to be to oppose every measure which is in the interest of the Government and of humanity, think it would be an excellent idea to have the rebels here, to themselves vote upon and fix the conditions of reconstruction. A most happy idea! Having failed to destroy the Government by a resort to arms, now only once let them in here under the old apportionment, which makes a rebel of South Carolina as big as two or three loyal men of Illinois, let them in with the blood of slain patriots yet dripping from their fingers, and the doubly damning crime of starving prisoners still blackening their souls, and then talk about amending the Constitution.

Sir, the Constitution makes Congress the judge of the election and qualification of its own members. The Constitution also declares that "the Government" (not the President) "shall guaranty to each State a republican form of government." When a Territory makes application for admission as a State, the Congress has first to pass the law, and fix the terms for its admission.

The States in rebellion revolted, destroyed their State governments as States of this Union; fought us four years for a separate nationality; were vanquished. Now, who shall determine the conditions upon which Congress shall receive their Senators and Representatives again? Who shall say whether they have readopted a republican form of government?

The President seems to suppose it his prerogative. But the President will yet learn that he is not the "Government." He dictated to those States conditions, what they should and should not put into their constitutions, and cannot Congress, the representatives of the people, the real "Government," do the same?

The whole copperhead fraternity applaud the President. Rebels South and sympathizers with rebellion North glorify Andrew Johnson; the devilish company of traitors praise him; the confederates of Booth and Payne praise him; the importers of poisoned clothing praise him; the glorious company of Jeff Davis, his cabinet, his congress,

his generals, with all the enemies of freedom in our own land, glorify him; and the enemies of liberty and republican institutions throughout the world, all who were on the side of the rebellion and against us throughout the war, praise and magnify his name. These, together with a few Judases and Esaus, applaud Andrew Johnson. Yet he dictated conditions to the rebel States, and cannot the law-making power of the Government do the same?

Sir, it is high time that traitors and the world shall know that the same men who preserved the Government from destruction, who made the laws, furnished the means, and did the fighting necessary for its preservation and defense, ought to and will reconstruct and do what is necessary to maintain it. The same who dictated terms to rebels in the field ought to and will dictate the terms upon which, and which only, they may be received into fellowship and power again. Men to whom the people have intrusted positions of high honor and power may apostatize and betray them for a little season, but they are sure to be crushed under the wheels of the great car of the people's wrath.

There are some who suppose that men who have given limbs and health and the best years of their lives for the salvation of their country, can now be bought for a petty post office; that fathers who have laid their sons upon the altar of their country are to be turned aside with the hope of a little temporary, contemptible patronage. Such persons do not know the American people, the Union people of the North. They have sacrificed too much to turn back now; their patriotism is made of better material, of sterner stuff than that. A people, in whose every house there is either a returned soldier or the vacant chair of one who never will return, cannot be bought with any such stuff. And it is strange that men in high places do not know these things. Are they both blind and deaf? Why, sir, a man need not read the papers to find it out. If he will but put his ear to the ground he may still hear the tramp, tramp, tramp, of the men who marched with Sherman to the sea, and with Grant to Richmond and Vicksburg, still keeping time to the same music, and still animated and inspired by the same determination. The very air is vocal with the loud demands of the people; while the invisible spirits of half a million of the noblest men who ever lived, and who sleep the sleep which shall know no waking until the last great roll-call is sounded, beseech us that we do not let their sacrifice be in vain.

Mr. Speaker, I now yield the remainder of my time to the gentleman from Massachusetts, [Mr. DAWES.]

Mr. DAWES. Mr. Speaker, I do not intend to discuss the merits of this measure, for I give it, with the exception of the third section, my hearty support. I shall vote for the amend-

ment if I cannot get the section excluded. But I prefer not to stake the infinite good of the remainder upon the uncertainty of ever incorporating the third section in the Constitution. I desire now to call the attention of the House again to the question which I raised yesterday, and to which my colleague [Mr. BANKS] has referred in the remarks which he made a short time ago, namely, that of a possible contest in the Electoral College. I do feel that the question, notwithstanding the easy solution of it to which he has arrived, has more of a serious character in it than seems to have suggested itself to his mind; and with the indulgence of the House I will endeavor to show it.

There is no legislation in the land upon the subject. The only provision governing the counting of the votes of the Electoral College is in the Constitution itself; and it is in these words:

"The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates; and the votes shall then be counted."

But who shall decide, if there be a dispute, whether a vote has come from a man legally chosen? There is no tribunal yet erected to determine that fact. Chancellor Kent says that it is *cases omissus*, a case that has not been provided for by the framers of the Constitution; that there is no provision in the laws or the Constitution of the United States by which that may be determined. Whether or not it be beyond our power under the Constitution to make such provision, certain it is that we have made no such provision. Chancellor Kent said upon this point, as reported in the debate in connection with the very case which has been cited by my colleague, that of the Wisconsin vote in 1856, that it was a *cases omissus*, and neither law nor the Constitution itself had provided a solution of the difficulty. When the nation should be involved in such a contest he trembled for the result. He speaks of it in his Commentaries in the following words:

"The Constitution does not express by whom the votes are to be counted and the result declared. In the case of questionable votes and it closely contested election, this power may be important; and I presume, in the absence of all legislative provision on the subject, that the President of the Senate counts the votes and determines the result, and that the house are present only as spectators, to witness the fairness and accuracy of the transaction."

Upon the occasion alluded to by my colleague, Henry Winter Davis used this language:

"Now, sir, no strict constructionist, or wide or loose constructionist, can find any function confided to both Houses together to one separately, which enables them to pass, preliminarily, upon the point whether one vote shall be counted or another rejected. No judgment is called for at all. On the contrary, the Constitution carefully avoids asking for any judgment by anybody upon a mere count."

The idea of referring this to the two Houses in their separate capacity for solution involves at once another difficulty. The two Houses in their separate capacity act as legislators, and legislators alone, and their functions are all prescribed by the Constitution itself. This is not one of them. They cannot as separate bodies act upon the genuineness of the election of a member of the Electoral College, for they have not been constituted for any such purpose nor clothed with any such power. They are not clothed with the judicial power of passing upon the validity of an election of President and Vice President; and suppose the Senate comes to one conclusion and the House to another, what is the result? Suppose the Senate in the Wisconsin case had determined that Mr. Buchanan was elected and the House in its separate capacity had determined that no one was elected, the Constitution requires that the House, thereupon, shall proceed immediately, yes, immediately is the command of the Constitution, without the concurrence of the Senate, to choose a President. Then comes the terrible peril in which this country will be involved, the ordeal through which it will have to pass where the House of Representatives determine one way and the Senate the other.

I do not mean to say it is not within our power under the Constitution to provide a tribunal; upon that question there is no occasion to remark. I have only to say that as yet no such tribunal has been provided. On the occasion alluded to by my colleague it was the opinion of learned men both in the House and in the Senate that the country barely escaped a revolution. They did not decide, as I understood my colleague to say, by passing into their respective Halls whether the vote of Wisconsin should be counted or not. The question was not decided, and remains to be decided to this day. After being in convention and witnessing the opening of the votes, the Senate of its own motion left this Hall and went into their separate Chamber before the work was completed and there undertook to complete by concurrent action, by joint committee of the two Houses, whatever failed to be done here in the meeting of the two bodies, growing out of the dispute about the Wisconsin vote.

But, Mr. Speaker, they failed to accomplish anything. Their resolution was laid upon the table. So with a similar resolution in the House. To-day it has not been decided whether those votes of Wisconsin should be counted or not. Now, suppose the disputed vote had determined the result, and suppose the House differed in its conclusion with the Senate of the United States, and the House elected one man President and the Senate declared that another man was elected. It needs no argument and no suggestion from me to show the House the peril in which the nation would have been involved, and all this in a time of comparative peace. That is one objection I have to the third section in the proposed amendment of the Constitution unless you erect some tribunal to decide the question which may be made. It increases that peril by increasing the danger of a contest, and at a time, too, when there is not yet peace. The outliers of war are still glowing. Still, as I said before, I am disposed to vote for it if that cannot be stricken out, but I will give it my hearty support, and so will every loyal heart, if not embarrassed by that clause.

Let me read, if I have a moment's time, what was said by a distinguished gentleman who has since been Governor of his State, Mr. Washburn, of Maine, when the peace of our country came so nigh being disturbed by the Wisconsin case:

"The Constitution provides that the President of the Senate, in the presence of the two houses, shall open all certificates, and that the votes shall be counted, and the person having the greatest number of votes for President shall be President of the United States, if such number be a majority of the whole number of electors appointed and so in regard to the Vice President. The votes shall be opened in the presence of the Senate and House of Representatives and then counted. By them? There is no provision of the Constitution, or of law, that they shall be counted by the Senate or the House, or by a joint convention. There has been no joint convention; nor could there have been any. The assemblage here could do nothing for which it had not the authority of law, and there is no law authorizing the count of these votes by a joint convention, or prescribing the rules and regulations to be observed therein. It was the duty of the President of the Senate here, in the presence of the two Houses, to open the certificates, and to cause the votes to be counted. The Houses had directed how they were to be counted by a teller appointed on the part of the Senate and two tellers appointed on the part of the Reuse. These tellers made the count, and here, in the presence of us all, made their report to the President of the Senate; and the President of the Senate, in the presence of the two Houses, and in exact conformity with the provisions of

the Constitution did declare the whole number of votes, and did declare who had this majority. Nothing but that could have been done. There was no power on the part of the Senate, or on the part of the House, to interfere with the execution of this duty precisely as specified in the Constitution and in the resolution of the the two Houses.

"I hold, therefore, that no motion whatever can be made, and that the meeting, under the Constitution, the law of 1792, and the joint resolution, is functus officio. I have no doubt, sir, that there is here a cases omissus; that there is no law and no provision of the Constitution by which anything can possibly be done except what has been done by the President of the Senate in presence of the two Houses. I hold that he ruled aright when he refused to entertain the motions made to him, and when he announced from the chair, in presence of the Senate, and to the House, what had been declared to him by the tellers. That is all that he did, and all that he had authority to do. I am, at the same time, very clear that it is of the highest importance that there should be some legislation on this subject. All that we can now do is to acquiesce in, the decision that has been made, and to set ourselves to work immediately for the passage of a law which will prevent any trouble or difficulty of this kind in future. I received a letter but a few days ago from a gentleman eminent for his wisdom and ability, who states therein that the late Chancellor Kent, of New York, had told him that here was clearly a cases omissus; that there was no power, either in the House or Senate, or in a joint convention, to interfere and participate authoritatively in counting and declaring the votes and deciding upon their validity; and he said that the Chancellor added that he feared the time might come when the country would be shaken to its center on this point."

Mr. Seward and Mr. Collamer in the Senate, on the same occasion, expressed similar views, each declaring the impotency of the two Houses or any tribunal known to the law to solve the difficulty, and at the same time each rejoicing at the escape from peril which the immateriality of the vote in question had secured, but pointing out the terrible danger to which the nation would be exposed if ever a material vote in the Electoral College should be questioned.

[Here the hammer fell.]

RECONSTRUCTION—AGAIN.

Mr. BINGHAM obtained the floor.

Mr. BANKS. I ask the gentleman to allow me one moment to say a word of reply to my colleague.

Mr. BINGHAM. I am willing to yield if it does not come out of my time, otherwise I must proceed.

The SPEAKER. It will come out of the gentleman's time.

Mr. BINGHAM. Mr. Speaker, I beg the House to remember that the three several measures reported by the committee on reconstruction must be considered together as an entirety in order to determine the merit of the question immediately involved before the House in the adoption of the constitutional amendment. I do not believe myself, sir, that the purpose for which this committee was organized by the House would be fully attained if nothing more were to be done by the Congress of the United States than simply to send to the people of the several States the proposition reported by the committee for the amendment of the Constitution.

There are three measures, Mr. Speaker, and not, as some gentlemen seem to argue, but one, that have been reported by this committee. The first of these measures is a condition-precedent to the reorganization and restoration to political power of any State lately in insurrection. That measure has more than once during this debate been lost sight of by gentlemen who have spoken.

No State lately in insurrection, according to one of the measures reported, in case it shall become a law of the United States, can ever exercise political powers in this Union until the pending constitutional amendment, shall first have become a part of the Constitution of the United States, by the consent of the Legislatures of three fourths of the States now maintaining their constitutional relations to the Government, and by the subsequent consent of the insurrectionary State itself, the State also conforming its own constitution and laws to all its requirements.

Additional to this there is yet another measure reported by the committee to which I attach great importance, and to which I doubt not the loyal people of this country of every section will attach great importance. That is the bill which disqualifies forever from holding any office of honor or trust within the Republic every leading and marked actor in the late rebellion. By that bill the president and vice president of the late confederate States so

excluded; all persons who were educated at the national academies, naval or military, who have been endowed by the people with the power of knowledge, a gift next in value to the gift of the understanding with which the breath of the Almighty has given them, are excluded; the persons who represented this confederacy of treason and crime in any part of the habitable globe are excluded; and above all and beyond all, all persons who in any manner subjected to untimely death by exposure or neglect or the slow torture of famine or poison the captive defenders of the Union, are forever excluded.

The mere statement and concession of the people's right to exercise this power, which is undoubtedly the sovereign right of the American people, by a congressional act, ought to have suggested to the honorable gentleman from Massachusetts [Mr. BANKS] that if it is needful in this great work of reconstruction further to disfranchise the participants in this rebellion, it can be done in like manner by an act of Congress, and without a constitutional amendment.

The franchise of a Federal elective office is as clearly one of the privileges of a citizen of the United States as is the elective franchise for choosing Representatives in Congress or presidential electors. They are both provided for and guaranteed in your Constitution. Why then, prohibit rebels from the enjoyment of the first for life by an act of Congress and restrict the second for a term of years by a constitutional amendment? To be sure we all agree, and the great body of the people of this country agree, and the committee thus far in reporting measures of reconstruction agree, that the exercise of the elective franchise, though it be one of the privileges of a citizen of the Republic, is exclusively under the control of the States. But, sir, the committee never intimated and never intended to intimate by any measure they have reported that any State lately in insurrection can exercise either that power or any other until it is restored to its constitutional relation to the Union save by the express or implied consent of the Congress of the United States, nor that after being restored they can exercise that power contrary to the express conditions prescribed by Congress for their restoration. The power to prescribe these conditions is exclusively in Congress.

That is the philosophy of every measure of reconstruction now pending before the House. And that is wherein it is opposed to the opinions of gentlemen on the other side of the House who have spoken, I am sorry to say—and I say it without the slightest intention of giving offense to any man—not in the spirit of representatives of the people, but in the spirit of partisans. For myself, I cannot approach the discussion of this great question, which concerns the safety of all, in the spirit of a partisan. God forbid that I should approach this subject in any other character than that of a representative of the people—a representative of the people not unmindful of the oath which I took, sir, before your tribune.

Mr. WRIGHT. I rise to a question of order. The gentleman, by reflection, seems to infer that we do not represent the people, and that we are unmindful of our oaths.

The SPEAKER. That is not a point of order under parliamentary law, but an interruption without the consent of the member speaking.

Mr. BINGHAM. The want of the Republic to-day is not a Democratic party, is not a Republican party, is not any party save a party for the Union, for the Constitution, for the supremacy of the laws, for the restoration of all the States to their political rights and powers under such irrevocable guarantees as will forevermore secure the safety of the Republic, the equality of the States, and the equal rights of all the people under the sanctions of inviolable law.

I trust, Mr. Speaker, that after the roll shall have been called this day, and the departing sun shall have gilded with its last rays the dome of the Capitol, it will not be recorded by the pen of the historian that the sad hour had come to this great Republic which, in the day of its approaching dissolution, came to the republic of ancient Rome, when it was said Caesar had his party, Antony had his party, Brutus had his party, but the Commonwealth had none!

I speak to-day, Mr. Speaker, to the party that is for the Republic; to the party that is for the Constitution; to the party that is for the speedy restoration to their constitutional relations of the late insurrectionary States, under such perpetual guarantees as will guard the future of the Republic by the united voice of a united people against the sad calamities which have in these late years befallen it.

Mr. Speaker, the final settlement of this grave question which touches the nation's life is at last with the people of the loyal States—the loyal people of the Union. To the end, therefore, knowing, as the committee did know, that parties must dissolve, that men must perish from the earth, but that the Commonwealth is for all time, if its laws be just and its people be faithful, they propose to the several States a perpetual covenant in the form of a constitutional amendment, never to be broken so long as the people adhere to their cherished forms of government, which, when ratified, will secure the safety of all and the rights of each, not only during the present

generation, but throughout all generations, until this grand example of free government shall itself be forgotten. The amendment reported by the committee is as follows :

ARTICLE —.

Sec. 1. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sec. 2. Representatives shall be apportioned among the several States which may be included within this Union according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But whenever, in any State, the elective franchise shall be denied to any portion of its male citizens not less than twenty-one years of age, or in anyway abridged, except for participation in rebellion or other crime, the basis of representation in such State shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens not less than twenty-one years of age.

Sec. 3. Until the 4th day of July, in the year 1870, all persons who voluntarily adhered to the late insurrection, giving it aid and comfort, shall be excluded from the right to vote for Representatives in Congress and for electors for President and Vice President of the United States.

Sec. 4. Neither the United States nor any State shall assume or pay any debt or obligation already incurred, or which may hereafter be incurred, in aid of insurrection or of war against the United States, or any claim for compensation for loss of involuntary service or labor.

Sec. 5. The Congress shall have power to enforce by appropriate legislation the provisions of this article.

The necessity for the first section of this amendment to the Constitution, Mr. Speaker, is one of the lessons that have been taught to your committee and taught to all the people of this country by the history of the past four years of terrific conflict—that history in which God is, and in which He teaches the profoundest lessons to men and nations. There was a want hitherto, and there remains a want now, in the Constitution of our country, which the proposed amendment will supply. What is that? It is the power in the people, the whole people of the United States, by express authority of the Constitution to do that by congressional enactment which hitherto they have not had the power to do, and have never even attempted to do; that is, to protect by national law the privileges and immunities of all the citizens of the Republic and the inborn rights of every person within its jurisdiction whenever the same shall be abridged or denied by the unconstitutional acts of any State.

Allow me, Mr. Speaker, in passing, to say that this amendment takes from no State any right that ever pertained to it. No State ever had the right, under the forms of law or otherwise, to deny to any freeman the equal protection of the laws or to abridge the privileges or immunities of any citizen of the Republic, although many of them have assumed and exercised the power, and that without remedy. The amendment does not give, as the second section shows, the power to Congress of regulating suffrage in the several States.

The second section excludes the conclusion that by the first section suffrage is subjected to congressional law; save, indeed, with this exception, that as the right in the people of each State to a republican government and to choose their Representatives in Congress is of the guarantees of the Constitution, by this amendment a remedy might be given directly for a case supposed by Madison, where treason might change a State government from a republican to a despotic government, and thereby deny suffrage to the people. Why should any American citizen object to that? But, sir, it has been suggested, not here, but elsewhere, if this section does not confer suffrage the need of it is not perceived. To all such I beg leave again to say, that many instances of State injustice and oppression have already occurred in the State legislation of this Union, of flagrant violations of the guaranteed privileges of citizens of the United States, for which the national Government furnished and could furnish by law no remedy whatever. Contrary to the express letter of your Constitution, "cruel and unusual punishments" have been inflicted under State laws within this Union upon citizens, not only for crimes committed, but for sacred duty done, for which and against which the Government of the United States had provided no remedy and could provide none.

Sir, the words of the Constitution that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States" include, among other privileges, the right to bear true allegiance to the Constitution and laws of the United States, and to be protected in life, liberty, and property. Next, sir, to the allegiance which we all owe to God our Creator, is the allegiance which we owe to our common country.

The time was in our history, thirty-three years ago, when, in the State of South Carolina, by solemn ordinance adopted in a convention held under the authority of State law, it was ordained, as a part of the fundamental law of

that State, that the citizens of South Carolina, being citizens of the United States as well, should abjure their allegiance to every other government or authority than that of the State of South Carolina.

That ordinance contained these words :

"The allegiance of the citizens of this State is due to the State: and no allegiance is due from them to any other Power or authority; and the General Assembly of said State is hereby empowered from time to time, when they may deem it proper, to provide for the administration to the citizens and officers of the State, or such of the said officers as they may think fit, of suitable oaths or affirmations, binding them to the observance of such allegiance, and abjuring all other allegiance; and also to define what shall amount to a violation of their allegiance, and to provide the proper punishment for such violation."

There was also, as gentlemen know, an attempt made at the same time by that State to nullify the revenue laws of the United States. What was the legislation of Congress in that day to meet this usurpation of authority by that State, violative alike of the rights of the national Government and of the rights of the citizen?

In that hour of danger and trial to the country there was as able a body of men in this Capitol as was ever convened in Washington, and of these were Webster, Clay, Benton, Silas Wright, John Quincy Adams, and Edward Livingston. They provided a remedy by law for the invasion of the rights of the Federal Government and for the protection of its officials and those assisting them in executing the revenue laws. (See 4 Statutes-at-Large, G32-33.) No remedy was provided to protect the citizen. Why was the act to provide for the collection of the revenue passed, and to protect all acting under it, and no protection given to secure the citizen against punishment for fidelity to

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his country? But one answer can be given. There was in the Constitution of the United States an express grant of power to the Federal Congress to lay and collect duties and imposts and to pass all laws necessary to carry that grant of power into execution. But, sir, that body of great and patriotic men looked in vain for any grant of power in the Constitution by which to give protection to the citizens of the United States resident in South Carolina against the infamous provision of the ordinance which required them to abjure the allegiance which they owed their country. It was an opprobrium to the Republic that for fidelity to the United States they could not by national law be protected against the degrading punishment inflicted on slaves and felons by State law. That great want of the citizen and stranger, protection by national law from unconstitutional State enactments, is supplied by the first section of this amendment. That is the extent that it hath, no more; and let gentlemen answer to God and their country who oppose its incorporation into the organic law of the land.

The second section of the amendment simply provides for the equalization of representation among all the States of the Union, North, South, East, and West. It makes no discrimination. New York has a colored population of fifty thousand. By this section, if that great State discriminates against her colored population as to the elective franchise, (except in cases of crime,) she loses to that extent her representative power in Congress. So also will it be with every other State.

Upon the third section of the amendment gentlemen are divided upon this side of the House as well as upon the other. It is a provision that until the year 1870 all persons who voluntarily adhered to the late insurrection, giving it aid and comfort, shall be excluded from the right to vote for Representatives in Congress or for electors for President or Vice President of the United States. This section imposes no other or further disability.

It seems to me, Mr. Speaker, that this section can bring no strength to the amendment, although I fully agree with the honorable gentleman from Massachusetts [Mr. BANKS] in the words which he so fitly uttered, it is within the authority of the people of the United States to disfranchise these parties. But, sir, I submit to the honorable gentleman, and I submit to the House, that if we have the power by a mere act of Congress, (as is conceded by the committee,) to take from rebels the franchise of office under the Government of the United States for life, as is provided in the bill reported by the committee, we can as well take from them until 1870, by an act of Congress, the right to vote for Representatives in Congress or for presidential electors, as is provided in the third section of this amendment.

Mr. STEVENS. And have it vetoed.

Mr. BINGHAM. My friend from Pennsylvania says, "and have it vetoed," I am not fearful of any veto at the other end of the avenue. I believe no veto can defeat the final passage of either of the measures reported to the House, nor can a veto defeat the final triumph of this constitutional amendment before the people. The success of the amendment here depends upon no veto. It does not go to the President for his sanction. Touching, however, the other question, the veto of the bill, even with the provision of the third section added to it, I do not believe for

a moment, that the President will veto it, and for the reasons suggested, which I have not time to enumerate now, by the gentleman from Massachusetts in the citations he made from the President's proclamation of the 29th of May last and the just deductions he drew therefrom. I can vote for the amendment with the third section in as readily as without it. It raises no question of power; it imposes no unjust disability. It involves a question of policy, not of power. The sovereignty of the nation can unquestionably disfranchise the persons referred to, not only until 1870, but until seventy times seventy shall have passed over them, if it pleases God to allow them so long to live upon the earth.

The question upon the third section, and the only question, is, what do we gain by putting it in the constitutional amendment? If thereby we endanger the adoption of the amendment in the Senate, or its final ratification by the requisite number of States, we should omit it. It has been said that the third section is incapable of execution if adopted. I beg leave to say to the House that in my opinion an amendment that is not to be executed to the full, and which is incapable of full execution, ought not to be put into the Constitution. My honorable colleague from the Columbus district, [Mr. SHELLABARGER,] in my judgment, suggested, in the few remarks which he made yesterday, the only method by which the Government of the United States can enforce the first clause of that section, and that is by making a registry law for congressional districts, and the election of Representatives to Congress all over the country, and appointing election officers to conduct the same. The first clause only of the third section can in that way be executed; but is there anybody here who proposes to send Federal election officers into Massachusetts or New York to control the elections of Representatives to Congress? The amendment, sir, is of universal application, and if adopted, it is to be enforced in every State in the Union. There are voters within the operation of this section in every State. I have no objection to their disfranchisement, but are you going to enforce the provision if adopted? If not, why retain it? Is it to be retained simply to furnish demagogues a pretext for raising the howl that we exclude rebels for four years only that we may control the next presidential election? Honest, intelligent, and reflecting men will scout such a suggestion, but the calculating and the careless or thoughtless may accept and act upon it to the hurt, the lasting hurt, of the sacred cause this day in your hands. How, I ask, can the last clause of this third section be enforced?

That clause of the section excludes until 1870 all rebels from voting for electors for President and Vice President of the United States.

I venture to say that by the very letter and intendment of the Constitution of our country, the great seal of a State, duly organized and exercising its functions within this Union touching the appointment of electors for President and Vice President of the United States, is final and conclusive upon Congress, except when the certificate shows that the electors were appointed on a day other than that prescribed by the Constitution or the laws. The Constitution has provided that these electors shall be appointed by each State in such manner as the Legislature thereof may direct; that the Congress may determine the time of choosing the electors and the day on which they shall give their votes, which day shall be the same throughout the United States, and that the electors shall certify their action.

If the State and the electors' certificates show that all these provisions, have been complied with, Congress cannot go behind them and inquire who voted for the electors. If, on the contrary, the certificate from any State discloses that the electors did not meet on the day prescribed by law, as was the fact in the Wisconsin case, to which the gentleman from Massachusetts [Mr. BANKS] referred, of course the Congress could reject the vote from that State, but where the certificates are regular, where they show a due appointment of electors, that the electors were chosen on the day prescribed by law, and met and voted for President and Vice President on the day prescribed by law, Congress cannot go behind the certificates; neither can the two Houses of Congress, in joint convention or separately, investigate the question. The appointment of electors for President and Vice President of the United States is the act of a State and not of individuals. "Each State shall appoint," says the Constitution; therefore the act can be evidenced only by the certificate of the State officials, under its great seal, which imports absolute verity. How could Congress say the appointment was not the act of the State against the certificate and seal of the State?

The remarks of some gentlemen to the effect that under the Constitution we could enforce the first clause of the section by inquiring into the election of members of the House or of the Senate, do not apply to the last clause, because the express language of the Constitution is that "each House shall be the judge of the elections and returns" as well as the "qualifications of its own members." There is no like grant in the Constitution that each House or both Houses in joint convention may inquire into the appointment of electors; therefore the second clause of the third section of the amendment is useless.

I venture to say that clause is useless unless, indeed, by implication Congress is to declare the express text of

the Constitution as I have cited it repealed by the proposed amendment when adopted, and that by virtue of it Congress will prescribe by law the mode and manner of appointing electors for President and Vice President of the United States, in the face of the existing provision of the Constitution that "each State shall appoint the electors in such manner as the Legislature thereof may direct." Who will say, if this amendment is adopted, that the State Legislatures may not direct the manner and each State appoint electors? To what, then, are we reduced? This amendment does not disqualify any rebel or aider of the rebellion from voting at all the State elections for all State officers, nor does it disqualify them from being appointed presidential electors. It amounts, therefore, to this: though it be adopted, and made part of the Constitution, yet all persons "who voluntarily adhered to the late insurrection, giving it aid and comfort," may vote at all the State elections for State officers, and, being largely in the majority in every insurrectionary State, may elect the State Legislature, which may appoint electors for President and Vice President of the United States, and from aught in the amendment may appoint rebels as such electors.

It seems to me, sir, that it must by this time be apparent to members of the House that this clause of the amendment is never to be executed until that part of the text of your Constitution is stricken out; or in other words, that it will require another amendment to the Constitution to enforce this clause if adopted.

I trust, therefore, that when the vote comes to be taken on the pending motion to strike out which is offered by way of instruction to the motion to recommit, it will be adopted, and that afterward the House will, if it deems it important, put such a provision as to the election of Representatives to Congress as it has the lawful right to do in the bill of disfranchisement.

Mr. Speaker, there is another section which simply prohibits the United States or any State of this Union from ever assuming or paying any part of the rebel debt or making compensation for emancipated slaves. I do not believe that there is a man on this floor who can answer to his constituency for withholding his vote from that proposition. It involves the future fidelity of the nation. It is a declaration in solemn form, if accepted by the people, that the resources of this great country shall be used in the future, not to liquidate debts contracted in aid of rebellion, not to pay for emancipated slaves, but to maintain inviolate the plighted faith of the nation to all the world and especially to its dead and its living defenders.

Mr. Speaker, I trust that this amendment, with or without the third section, will pass this House. I trust that the disfranchisement bill, with or without additions, will pass this House. I trust that the enabling act for the restoration of the States that have been in rebellion will, with amendment, pass this House; so that the day may soon come when Tennessee—loyal Tennessee, loyal in the very heart of the rebellion,

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her mountains and plains blasted by the ravages of war and stained with the blood of her faithful children fallen in the great struggle for the maintenance of the Union—having already conformed her constitution and laws to every provision of this amendment, will at once upon its submission by Congress irrevocably ratify it, and be without further delay represented in Congress by her loyal Representatives and Senators, duly elected and duly qualified and ready to take the oath of office prescribed by existing law.

Let that great example be set by Tennessee and it will be worth a hundred thousand votes to the loyal people in the free North. Let this be done and it will be hailed as the harbinger of that day for which all good men pray, when the fallen pillars of the Republic shall be restored without violence or the noise of words or the sound of the hammer, each to its original place in the sacred temple of our national liberties, thereby giving assurance to all the world that for the defense of the Republic it was not in vain that a million and a half of men, the very elect of the earth, rushed to arms; that the Republic still lives, and will live forevermore, the sanctuary of an inviolable justice, the refuge of liberty, and the imperishable monument of the nation's dead, from the humblest soldier who perished on the march, or went down amid the thunder and tempest of the dread conflict, up through all the shining roll of heroes, and patriots, and martyrs, to the incorruptible and immortal Commander-in-Chief, who fell by an assassin's hand in the capital, and thus died that his country might live.

Mr. STEVENS. Mr. Speaker, I rise to conclude the debate, but I will not move the previous question until I finish what I have to say.

I am glad, sir, to see great unanimity among the Union friends in this House on all the provisions of this joint resolution except the third one. I am not very much gratified to see any division among our friends on that which I consider the vital proposition of them all. Without that, it amounts to nothing. I do not care the snap of my finger whether it be passed or not if that be stricken out. Before another Congress shall have assembled here, and before this can be carried into full effect, there will be no friends of the Union left on this side of the House to carry it out

as—

Mr. LE BLOND. Members are crowding the aisles on the other side and the open space in the center of the House so that we can neither see nor hear what is going on.

The SPEAKER. Members must resume their seats.

Mr. STEVENS. I should be sorry to find that that provision was stricken out, because before any portion of this can be put into operation there will be, if not a Herod, a worse than Herod elsewhere to obstruct our actions. That side of the House will be filled with yelling secessionists and hissing copperheads. Give us the third section or give us nothing. Do not balk us with the pretense of an amendment which throws the Union into the hands of the enemy before it becomes consolidated.

Gentlemen say I speak of party. Whenever party is necessary to sustain the Union I say rally to your party and save the Union. I do not hesitate to say at once, that section is there to save or destroy the Union party, is there to save or destroy the Union by the salvation or destruction of the Union party.

The gentleman from Ohio [Mr. BINGHAM] who has just taken his seat thinks it difficult to carry it into execution, and he proposes to put it into a bill which the President can veto. Will my friend tell me how much easier it is to execute it as a law than as a provision of the Constitution? I say if this amendment prevails you must legislate to carry out many parts of it. You must legislate for the purpose of ascertaining the basis of representation. You must legislate for registry such as they have in Maryland. It will not execute itself, but as soon as it becomes a law, Congress at the next session will legislate to carry it out both in reference to the presidential and all other elections as we have the right to do. So that objection falls to the ground.

Gentlemen tell us it is too strong—too strong for what? Too strong for their stomachs, but not for the people. Some say it is too lenient. It is too lenient for my hard heart. Not only to 1870, but to 18070, every rebel who shed the blood of loyal men should be prevented from exercising any power in this Government. That, even, would be too mild a punishment for them.

Gentlemen here have said you must not humble these people. Why not? Do not they deserve humiliation? Do not they deserve degradation? If they do not, who does? What criminal, what felon deserves it more, sir? They have not yet confessed their sins; and He who administers mercy and justice never forgives until the sinner confesses his sins and humbles himself at His footstool. Why should we forgive any more than He?

But we are told that we must take them back as equal brothers at once. I shall not agree they shall come back except as supplicants in sackcloth and ashes. Let them come back and ask forgiveness, and let us then consider how many we will forgive and how many we will exclude. All I regret is, this is not sufficiently stringent.

Sir, they tell us, I hear several gentlemen say, that these men should be admitted as equal brethren. Let not these friends of secession sing to me their siren song of peace and good will until they can stop my ears to the screams and groans of the dying victims at Memphis. I hold in my hand an elaborate account from a man whom I know to be of the highest respectability in the country, every word of which I believe. This account of that foul transaction only reached me last night. It is more horrible in its atrocity, although not to the same extent, than the massacre at Jamaica. Tell me Tennessee or any other State is loyal of whom such things are proved!

I regret that the true men of these States cannot be brought in, but they cannot be brought in with rebel constituency behind them. They would misrepresent their States. Therefore I can never agree to let them in under the present state of affairs. Let us have probation; let us be sure that something more than mere willingness to come in has been felt by them.

Mr. Speaker, I do not intend to occupy many minutes. I was indeed astonished to find my respected colleague, I will not say so tender-hearted, but so lenient to those toward whom mercy is not rendered necessary. But I know so well his natural kindness of heart and his proximity to that eloquent divine who so lately has slaughtered whole herds of fatted calves, that I cannot be much surprised at it. But, sir, if he is so fond of such associates, let me suggest in all kindness to him that he can find better company nearer home. He lives very near Cherry Hill, where there is a State institution containing several hundred inmates who—

Mr. THAYER. Will the gentleman allow me to correct him in his geography? I do not live near Cherry Hill. I live on the top of Chestnut Hill. [Laughter.] And I would like to know the name of the distinguished divine to whom he refers. I cannot recollect any one.

Mr. STEVENS. It is the late Henry Ward Beecher. [Laughter].

Mr. THAYER. I understood my colleague to say a neighbor of mine. Mr. Beecher lives about a hundred miles from me.

Mr. STEVENS. Well, that is in the neighborhood in this country, three thousand miles in extent. [Laughter.]

Mr. THAYER. The gentleman himself is about as near and much nearer to him in many things than I am.

[Laughter.]

Mr. STEVENS. How near does my friend live to Cherry Hill?

Mr. THAYER. About ten miles.

Mr. STEVENS. Well, let him walk ten miles, instead of going two or three thousand South, and he will find, as I said, three or four hundred inmates, whom, if he wishes to forgive and enfranchise, he will find at present little restrained of their rights. They have done nothing but err. There is no blood upon their hands; they have only erred in committing such little acts as arson and larceny. Let him go to one of those corridors and cause it to be opened and they will flock around him, and he will see men who are not half as bloody and have not committed half as many crimes as the rebels whom he wishes to see immediately admitted here.

Now, sir, for my part I am willing they shall come in when they are ready. Do not, I pray you, admit those who have slaughtered half a million of our countrymen until their clothes are dried, and until they are reclad. I do not wish to sit side by side with men whose garments smell of the blood of my kindred. Gentlemen seem to forget the scenes that were enacted here years ago. Many of you were not here. But my friend from Ohio [Mr. GARFIELD] ought to have kept up his reading enough to have been familiar with the history of those days, when the men that you propose to admit occupied the other side of the House; when the mighty Toombs, with his shaggy locks, headed a gang who, with shouts of defiance on this floor, rendered this a hell of legislation.

Ah, sir, it was but six years ago when they were here, just before they went out to join the armies of Catiline, just before they left this Hall. Those of you who were here then will remember the scene in which every southern member, encouraged by their allies, came forth in one yelling body, because a speech for freedom was being made here; when weapons were drawn, and Barksdale's bowie-knife gleamed before our eyes. Would you have these men back again so soon to reenact those scenes? Wait until I am gone, I pray you. I want not to go through it again. It will be but a short time for my colleague to wait. I hope he will not put us to that test.

Mr. THAYER. Will the gentleman yield?

Mr. STEVENS. Yes, sir.

Mr. THAYER. This amendment does not affect the eligibility of the people to whom he refers. That portion to which I directed my remarks excludes them from voting; and I wish to ask my colleague in this connection whether he thinks he can build a penitentiary big enough to hold eight million people.

Mr. STEVENS. Yes, sir, a penitentiary which is built at the point of the bayonet down below, and if they undertake to come here we will shoot them. That is the way to take care of these people. They deserve it, at least for a time.

Now, sir, if the gentlemen had remembered the scenes twenty years ago, when no man dared to speak without risking his life, when but a few men did do it—for there were cowards in those days, as there are in these—you would not have found them asking to bring these men in, and I only wonder that my friend from Ohio [Mr. BINGHAM] should intimate a desire to bring them here.

Mr. BINGHAM. I beg the gentleman's attention one moment. I have not by one word or vote of mine ever justified him in saying that I consent ever to bring them in.

Mr. STEVENS. Never; but the gentleman wished to strike out a section and kill this amendment, the most popular before the people of any that can be presented.

Mr. BINGHAM. I ask the gentleman to indulge me a moment. The third section does not touch the question of their coming in.

Mr. STEVENS. Then why is it you oppose it? If it is going to hurt nobody, in God's name let it remain. If it is going to hurt anybody, it will be the men that deserve it.

Now, Mr. Speaker, I withdraw my motion to recommit, and move the previous question.

Mr. GARFIELD. In case the previous question is not seconded, will my motion to amend be in order?

The SPEAKER. A motion to amend will be in order if the previous question is not seconded.

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Mr. GARFIELD. Then I hope it will be voted down, so that I may move this amendment:

All persons who voluntarily adhered to the late insurrection, giving aid and comfort to the so-called southern confederacy, are forever excluded from holding any office of trust or profit under the Government of the United States.

The SPEAKER. The question is on seconding the demand for the previous question. The question being put, there were—ayes 90, noes 59.

Mr. FARNSWORTH. I demand tellers on seconding the demand for the previous question.

Tellers were ordered; and the Speaker appointed Messrs. FARNSWORTH and STEVENS.

The House divided; and the tellers reported—ayes 85, noes 57.

So the previous question was seconded.

The question recurred on ordering the main question.

Mr. DELANO. I demand the yeas and nays.

The yeas and nays were ordered; and the question being taken, it was decided in the affirmative—yeas 84, nays 79, not voting 20 ; as follows:

YEAS—Messrs. Allison, Ames, Anderson, Banks, Baxter, Bidwell, Boutwell, Bromwell, Broomall, Chanter, Reader W. Clarke, Sidney Clarke, Cobb, Conklin, Cook, Defrees, Dixon, Drugs, Dumont, Eckley, Eggleston, Eldridge, Eliot, Crider, Grinnell, Aaron Harding, Abner C. Harding, Harris, Hart, Higby, Holmes, Hooper, Hotchkiss, Asahel W. Hubbard, Demos Hubbard, Ingersoll, Julian, Kelley, Kelso, Kerr, William Lawrence, Le Blond, Loan, Lynch, Marston, McClurg, McCullough, Meludoe, Mercur, Morrill, Moulton, Niblack, O'Neill, Orth, Paine, Patterson, Perham, Pike, Price, John H. Rice, Ritter, Rogers, Rollins, Ross, Rousseau, Sawyer, Schenck, Scofield, Shanklin, Shellabarger, Spalding, Stevens, Francis Thomas, John L. Thomas, Thornton, Trowbridge, Upson, Ward, Elihu B. Washburne, Welker, James F. Wilson, Stephen F. Wilson, Windom and Woodbridge—84.

NAYS—Messrs. Alley, Ancona, Delos R. Ashley, James M. Ashley, Baker, Baldwin, Barker, Beaman, Benjamin, Bergen, Bingham, Blaine, Blow, Boyer, Buckland, Bundy Coffroth, Cullom, Darling, Davis, Dawes, Dawson, Delano, Deming, Dodge, Donnelly, Farnsworth, Ferry, Pinsk, Garfield, Glossbrenner, Goodyear, Griswold, Hayes, Henderson, Chester D. Hubbard, James R. Hubbell, Hulbard, James Humphrey, Jenckes, Kasson, Ketcham, Kuykendall, Laflin, Latham, George V. Lawrence, Longyear, Marshall, McKee, McRuer, Miller, Moorhead, Morris, Myers, Newell, Phelps, Plants, Radford, Samuel J. Randall, William H. Randall, Raymond, Alexander H. Rice, Sitgreaves, Smith, Stilwell, Strouse, Taber, Taylor, Thayer, Trimble, Burt Van Horn, Robert T. Van Horn, Warner, Henry D. Washburn, William B. Washburn, Whaley, Williams, Winfield, and Wright—79.

NOT VOTING—Messrs. Brandegee, Culver, Denison, Farquhar, Hale, Hill, Hogan, John H. Hubbard, Edwin N. Hubbell, James M. Humphrey, Johnson, Jones, Marvin, Nicholson, Noell, Pomeroy, Sloan, Starr, Van Aernam, and Wentworth—20.

So the main question was ordered.

During the roll-call,

Mr. STROUSE stated that his colleague, Mr. DENISON, had been called away on account of sickness in his family.

The result having been announced as above recorded,

The joint resolution was then ordered to be engrossed and read a third time.

Mr. LE BLOND and Mr. ELDRIDGE demanded the yeas and nays on the passage of the joint resolution.

Mr. RANDALL, of Pennsylvania. I call for the reading of the engrossed joint resolution.

The SPEAKER. It is not on the Clerk's table.

Mr. HOOPER, of Massachusetts. I move the House adjourn, and upon that motion I call the yeas and nays.

The yeas and nays were ordered.

Mr. RANDALL, of Pennsylvania. I withdraw my call for the reading of the engrossed joint resolution.

Mr. HOOPER, of Massachusetts. Then I withdraw my motion to adjourn.

Mr. FARNSWORTH. I desire to inquire of the Chair if it is in order to move to recommit this joint resolution with instructions to amend.

The SPEAKER. That is not now in order pending the execution of the previous question. The previous question will not be exhausted until the joint resolution has been read the third time.

The joint resolution was then read the third time, as follows:

A joint resolution proposing an amendment to the Constitution of the United States.

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

(two thirds of both Houses concurring.) That the following article be proposed to the Legislatures of the several States, as an amendment to the Constitution of the United States, which, when ratified by three fourths of said Legislatures, shall be valid as part of the Constitution, namely:

ARTICLE —

Sec. 1. No State shall make or enforce any law which shall abridge the privileges or immunities of

citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sec. 2. Representatives shall be apportioned among the several States which may be included within this Union according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But whenever in any State the elective franchise shall be denied to any portion of its male citizens not less than twenty-one years of age, or in any way abridged, except for participation in rebellion or other crime the basis of representation in such State shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens not less than twenty-one years of age.

Sec. 3. Until the 4th day of July, in the year 1870, all persons who voluntarily adhered to the late insurrection, giving it aid and comfort, shall be excluded from the right to vote for Representatives in Congress and for electors for President and Vice President of the United States.

Sec. 4. Neither the United States nor any State shall assume or pay any debt or obligation already incurred, or which may hereafter be incurred, in aid of insurrection or of war against the United States, or any claim for compensation for loss of involuntary service or labor.

Sec. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Mr. STEVENS. I call the previous question on the passage of the joint resolution.

The previous question was seconded and the main question ordered.

Mr. ELDRIDGE and Mr. LE BLOND called for the yeas and nays on the passage of the joint resolution.

Mr. ASHLEY, of Ohio. Does not the Constitution require that the vote upon the passage of an amendment to the Constitution shall be taken by yeas and nays?

The SPEAKER. The Constitution requires that the vote shall be taken by yeas and nays upon the passage of a measure over a veto. But it only says that the passage of an amendment to the Constitution shall be by a two-thirds vote of each House of Congress, but does not say that the vote shall be by yeas and nays.

The yeas and nays were ordered.

The question was taken; and it was decided in the affirmative—yeas 128, nays 37, not voting 19; as follows:

YEAS—Messrs. Alley, Allison, Ames, Anderson, Delos R. Ashley, James M. Ashley, Baker, Baldwin, Banks, Barker, Baxter, Beaman, Benjamin, Bidwell, Bingham, Blaine, Blow, Boutwell, Bromwell, Broomall, Buckland, Bundy, Reader W. Clarke, Sidney Clarke, Cobb, Conkling, Cook, Cullom, Darling, Davis, Dawes, Defrees, Delano, Deming, Dixon, Dodge, Donnelly, Briggs, Dumont, Eckley, Eggleston, Eliot, Farnsworth, Perry, Garfield, Grinnell, Griswold, Abner C. Harding, Hart, Hayes, Henderson, Higby, Holmes, Hooper, Hotchkiss, Asahel W. Hubbard, Chester D. Hubbard, Demos Hubbard, James R. Hubbell, Hulburd, James Humphrey, Ingersoll, Jenckes, Julian, Kasson, Kelley, Kelso, Ketcham, Kuykendall. Laffin, George V. Lawrence, William Lawrence, Loan, Longyear, Lynch, Marston, McClurg, McIndoc, McKee, McRuer, Mercur, Miller, Moorhead, Morrill, Morris, Moulton, Myers, Newell, O'Neill, Orth, Paine, Patterson, Perham, Pike, Plants, Price, William H. Randall, Raymond, Alexander H. Rice. John Rice, Rollins, Sawyer, Schenck, Scofield, Shellabarger, Spalding, Stevens, Stilwell, Thayer, Francis Thomas, John L. Thomas, Trowbridge, Upson, Van Aernam, Burt Van Horn, Robert T. Van Horn, Ward, Warner, Elihu B. Washburne, Henry D. Washburn, William B. Washburn, Welker, Williams, James F. Wilson, Stephen F. Wilson, Windom, Woodbridge, and the Speaker—128.

NAYS—Messrs. Ancona, Bergen, Boyer, Chanter, Coffroth, Dawson, Eldridge, Finck, Glossbrenner, Goodyear, Grider, Aaron Harding, Harris, Kerr, Latham, Le Blond, Marshall, McCullough, Niblack, Phelps, Radford, Samuel J. Randall, Ritter, Rogers, Ross, Rousseau, Shanklin, Sitgreaves, Smith, Strouse, Taber, Taylor, Thornton, Trimble, Whaley, Winfield, and Wright—37.

NOT VOTING—Messrs. Brandegee, Culver, Denison, Farquhar, Hale, Hill, Hogan, John H. Hubbard, Edwin N. Hubbell, James M. Humphrey, Johnson, Jones, Marvin, Nicholson, Noell, Pomeroy, Sloan, Starr, and Wentworth—19.

So, two thirds voting in the affirmative, the joint resolution was passed.

When the name of Mr. RAYMOND was called, his response in the affirmative was received with applause on the floor and in the galleries.

During the call of the roll the following announcements were made:

Mr. TAYLOR. I desire to announce that my colleague, Mr. JAMES M. HUMPHREY, is paired with another colleague, Mr. POMEROY.

Mr. DEMING. My colleagues, Mr. BRANDEGEE and Mr. HUBBARD, are both absent. If they were present

they would both vote for this joint resolution.

Mr. ANCONA. My colleague, Mr. JOHNSON, is still detained from his seat by illness.

Mr. RADFORD. My colleague, Mr. JONES, is absent on account of sickness; if he was here he would vote against this joint resolution.

The announcement of the vote, as above recorded, was received with applause on the floor and in the galleries.

Mr. ELDRIDGE. I rise to a question of order. I want to know if it is understood that the proceedings of this House are to be interrupted by those who come here and occupy the galleries.

The SPEAKER. The gentleman from Wisconsin [Mr. ELDRIDGE] makes the point of order that expressions of approbation or disapprobation from persons occupying the galleries are not in order. The Chair sustains the point of order. Members upon the floor and spectators in the gallery will observe the rules of the house and maintain order.

Mr. ELDRIDGE. I do not want our proceedings to be interrupted by the "nigger-heads" in the galleries. [Hisses in the galleries.]

Mr. STEVENS. Is it in order for members on the floor to disturb those in the galleries? [Laughter.]

The SPEAKER. Members upon the floor should not insult the spectators in the galleries.

Mr. STEVENS. I move to reconsider the vote by which the joint resolution was passed; and also move that the motion to reconsider be laid on the table.

The latter motion was agreed to.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. McDONALD, its Chief Clerk, announced that the Senate had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the bill (H. R. No. 255) making appropriations for the construction, preservation, and repairs of certain fortifications and other works of defense for the year ending June 30, 1867.

The message further announced that the Senate had passed, two thirds of the Senate agreeing thereto, a joint resolution (H. R. No. 127) proposing an amendment to the Constitution of the United States, with sundry amendments, in which the concurrence of the House was requested.

RECONSTRUCTION.

Mr. BOUTWELL. I desire to give notice that it is the purpose of the committee on reconstruction to call up on next Wednesday, immediately after the morning hour, the amendments of the Senate to the joint resolution (H. R. No. 127) proposing an amendment to the Constitution of the United States.

RECONSTRUCTION.

Mr. STEVENS. I move now that the House proceed to the business on the Speaker's table.

The motion was agreed to; and the Speaker announced as the first business on the table the consideration of joint resolution of the House No. 127, proposing an amendment to the Constitution of the United States, returned from the Semite with amendments.

Mr. STEVENS. Mr. Speaker, that portion of the joint, committee which is composed of the Union members of this House have examined the amendments which have been made by the Senate, and are unanimously of opinion that they ought to be adopted by the House. I do not desire myself to discuss this question, the amendments are so slight, and unless there are gentlemen on the other side of the House who desire to discuss the question, we would be willing to take a vote upon it at once. If, however, there are any gentlemen on that side of the House who wish to be heard, I would suggest that, by unanimous consent, the speeches be limited to fifteen minutes each, and that the time shall not be extended upon any motion which may be made. I am willing to say twenty minutes, if that is preferred.

Several Members. Oh, no; fifteen minutes.

Mr. SCOFIELD. How many speeches is it proposed to allow?

Mr. STEVENS. I will say, furthermore, that it is my intention to call the previous question at three o'clock, or at furthest at half past three, so as to have the vote taken by four o'clock. I then propose that the speeches shall be fifteen minutes in length.

Mr. HARDING, of Kentucky. Is the gentleman willing to allow to this side of the House an hour, to be divided according as we may agree?

Mr. STEVENS. I think there will be no objection to allowing that side of the House to occupy one hour, and they may distribute it among themselves as they may agree. If not, I propose that, fifteen minutes be the length of the speeches, and I hope that will be unanimously agreed to.

Mr. FINCK. I hope it will be the understanding that if we are to have but one hour we may divide it as we see fit, so as not to limit the speeches to fifteen minutes, unless we have more than three speeches.

The SPEAKER. The gentlemen on both sides of the House had better agree upon the division of the time.

Mr. STEVENS. If the gentlemen do not agree upon it then let each one be confined to fifteen minutes.

The SPEAKER. The Chair bears no objection to the proposition.

Mr. ELDRIDGE. I suppose that it is not required of us on this side, inasmuch as we are impotent to object, that we shall consent to the gentlemen on the other side of the House dividing the Union just exactly as they see fit. [Laughter.]

The SPEAKER. Does the gentleman object?

Mr. ELDRIDGE. No, sir. I did not intend to do so.

Mr. BIDWELL. Mr. Speaker, there are some bills on the Speaker's table that ought to be referred so that the committees may be able to act upon them. There is one that I desire to have referred, and I hope there will be no objection.

RECONSTRUCTION—AGAIN.

Mr. ROGERS here addressed the House. [His remarks will be found in the Appendix.]

Mr. HENDERSON, Mr. Speaker, as I am the only Representative that the young, growing, and interesting State of Oregon has on this floor, I feel it my duty to ask the indulgence of the House while I submit the views I entertain on the great subject now under consideration. After the most careful investigation I have been able to give the matter, and all I have heard on it, I am constrained to believe that the whole difficulty in the way of disposing of the case grows out of the want of a correct knowledge of the relation the States lately in rebellion now sustain to the General Government. Are they in the Union or out of it? If in, in what sense? When a physician is called to minister to the welfare of a patient, in order that he may act beneficially he must understand the nature of the disease and what has caused it. So Congress can never act wisely and successfully in the work of reconstruction until we understand the exact status of the States lately in rebellion against the General Government and what caused the present condition of things.

In order that we may have a correct idea of the existing condition of those States, let us inquire what constitutes a State; let us analyze the composition of a State. There are four entities that enter into the organism of every State,. Take away any one of them, and the State ceases to exist as such. First, there must be territory;

second, there must be inhabitants; third, there must be a constitution and laws; fourth, there must be the necessary officers to carry these laws into execution. These are all essential to the existence of a State, and if you remove one the State ceases. Is not this true?

In the next place, let us inquire how a State becomes a member of the Union: first, it must present a constitution and laws in harmony with the Constitution and laws of the United States; second, the inhabitants of such Territory must express their desire for such Union through the proper channel: third, the consent of Congress must be given in a formal act. Is not this also true?

In the next place, let us inquire what are the consequences of such a union. First, the new States assume certain obligations and the General Government is relieved of certain duties and responsibilities; the new State acquires certain rights and privileges, and the General Government yields certain rights and prerogatives—the general result is, that the Federal Government has parted with just as much authority as the new State has gained by the union, The new State now stands upon an "equal footing" with the original States. But let it not be supposed that the General Government surrendered all her rights and prerogatives in such new State; far from it. It still retains the power to lay duties and collect taxes; to regulate commerce among the States; to regulate the currency; to establish post offices and post roads, &c.; Congress still retains these and other enumerated powers in all the States.

Let us next inquire what are the results of a rebellion against the General Government by one or more of the States of the Union: first, the States rebelling and throwing off the Constitution and laws of the United States, and making war against them, forfeit all the rights and privileges they acquired by coming into the Union; second, all these forfeited rights and privileges naturally and necessarily revert back to the source from which they came—the General Government. These conclusions are so natural and philosophical that I think no man will dispute them. Those rebel States staked all the rights that they held by the consent of the General Government at the commencement of the rebellion for the chance of what they could obtain by force; and being conquered, they justly and rightfully lost all.

Now, sir, at the time of the surrender of Lee's army, in what condition do we find them?

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As organized States, enjoying all the rights and privileges of States that had never rebelled? Have they constitutions and laws that the General Government is bound to respect? Nothing of the kind, sir. Did these conquered provinces still have the right to hold and treat men and women as slaves? Did Virginians still have the right to make merchandise of their own sons and daughters, as formerly? Did the President of the United States recognize the existence of their corps of State officers? No, sir; President Johnson recognized the existence of neither governor, judge, nor marshal among them, but rightfully and properly ignored and rejected the idea of a State officer in all rebeldom, and went to work and appointed temporary officers to act for the time being. The moment these States fired the first gun against the flag of the Union their State governments tumbled into nonentity; and if the rebellion had been squelched in four months instead of four years, the results as to their State governments would have been the same.

Now, sir, can a State government exist four years without an officer to execute its laws? If It can, how many years can it not exist without officers? Then, sir, if the position taken at the outset be correct, that a State cannot exist without officers to execute its laws, I have demonstrated that there was no State government in any of those Territories at the close of the rebellion; and as a matter of course they were not then in the Union as States, nor are they yet in the Union as such. I know that the question arises here, "What became of the rights of those who remained loyal in those Territories if their rights as States were all forfeited?" I answer, their natural rights remain, but their political rights for the time being all went down with their governments. This is their misfortune, and not the fault of the General Government.

Now, Mr. Speaker, it appears to me that the *status* of these so-called States is perfectly clear. As States they are out of the Union, having lost some of the essential elements of a State, and also having forfeited all their rights as such; but as Territories they are in the Union. Gentlemen on the other side of the House claim that if these Territories are not in the Union as States, then the Union is dissolved. This assertion is ridiculously absurd. Did not the Union once exist with but nine States, and afterwards with thirteen? Now, sir, if it then existed with these numbers can it not now exist with twenty-three States?

The loyal States did not prosecute the war for the purpose of sustaining State governments. Ask the tens of thousands of patriot soldiers who left wives and children that they loved dearer than life and went into the swamps and fens of the southern States, fought upon a hundred battle-fields and languished in prisons and camps, what

they made this terrible sacrifice for; would they answer, "to sustain State governments?" No, sir; not a bit of it. What did they care whether the tyrannical government of South Carolina, or the barbarous government of Virginia was sustained or not? They fought for no such paltry purpose; but they did fight, and the heroes who now fill honored graves died, to sustain national authority in all those territories. That is what the war was waged to sustain, not State governments. I ask gentlemen on the other side of the hall if that was a failure. Is any part of the United States territory now under a foreign government? No, thank God! the stars and stripes, surmounted by the American eagle, now wave triumphantly over every foot of soil the United States ever owned. The General Government holds and exercises all the prerogatives now that it held in those States before the rebellion, and also all forfeited by them. The rebels have all they acquired by the rebellion and all the General Government has conceded to them since its suppression, and no more.

In view of the foregoing facts in reference to those States lately in rebellion, I arrive at the following conclusions: First, that they are not in the Union as States. Second, that they are in it as Territories. Third, that rebels have no rights except those conceded to them since their subjugation. Fourth, that Congress may rightfully and lawfully dispose of all those Territories as she thinks proper, under two restrictions, namely: first, must secure to all that may be organized into States a "republican form of government;" second, must respect the private rights of the loyal inhabitants. Fifth, rebels have no just grounds for complaints while their lives are spared to them, as they staked rights, property, and life itself upon the chances of war and lost all. Sixth, that Congress has a perfect right to admit them or any of them to the enjoyment of State privileges now, at some future period, or never, as she may judge best calculated to promote the general welfare.

Now, Mr. Speaker, whether these statements and conclusions are all correct or not, they are the honest convictions of my heart, and I believe them true as certainly as I believe that God lives: consequently, I shall vote most heartily and cheerfully for the proposed amendment to the Constitution.

Mr. FINCK. Mr. Speaker, I do not suppose any words I may utter on this occasion will arrest the predetermined action of the large majority of this House, but I propose to call the attention of the House and the country, in a few remarks, to the strange spectacle which is now being exhibited by the Representatives of only a portion of the States of this Union. What do we see? A determined and persistent effort, to exclude from the national Legislature the Representatives of eleven States. We see a majority of the Representatives of the twenty-five States here represented saying, in a proposed amendment to the Constitution, to be followed up by legislation, to the eleven States which are unrepresented, that they shall never come within these walls unless they consent to and adopt all the conditions which shall be imposed by this majority of the twenty-five States.

More than this, and I say it here because I have the firm conviction that it is true; the majority on this floor represent to-day a minority of the people of the United States. Take my own State, Ohio, with one hundred and ninety-four thousand Democratic voters at the election last October. She has on this floor but two numbers representing that immense vote, while the two hundred and twenty-four thousand who voted the Republican ticket for Governor Cox in 1865 have seventeen Representatives on this floor, and in the Senate they have both members. If a fair vote of the people of Ohio were taken to-day as to whether the restoration policy of the President or the obstruction policy of the radicals of this Congress should be sustained, I believe a majority of the people of Ohio would be in favor of sustaining the policy of the President and of the two Democratic Representatives of that State on this floor.

Mr. Speaker, this is not the time to make amendments to the Constitution.

Time will not allow me to examine the whole of this proposition, and I will confine my remarks to the second and third sections. Now, what is proposed by the second section of this amendment? The purpose of the section is to reduce representation in this House in all the States which exclude the negro from voting. To exclude from the count, the entire colored population of the States whose constitutions or laws may deprive these people of the right, of suffrage. While this section admits the right of the States thus to exclude negroes from voting, it says to them, if you do so exclude them they shall also be excluded from all representation; and you shall suffer the penalty by loss of representation. It seeks to do by indirection that which gentlemen shrink from doing in a direct manner, namely, to compel the States to adopt negro suffrage. Why do you not present this question in an open and square way, and make the issue of negro suffrage direct before the people?

What is to be the effect of this amendment? In order to avoid the effect of this proposition before the people at the coming October and November elections, you have worded it in the manner in which it is presented to this House so as to enforce, if possible, through motives of interest, negro suffrage in those States where they reside in large numbers. How will this amendment affect such States? Let us take it as applied to a few of the States of this Union.

Take the State of Maine. According to the census of 1860, Maine had 167,724 white males over the age of twenty-one years. How many black males had she over that age? Only 362. So, then, it does not at all affect the power and influence of that State on this floor.

But look at Maryland. By the census of 1860 she had a population of 128,371 white male citizens of the age of twenty-one and at the same time she had a population of 38,030 black males over that age. This proposition, therefore, strikes from the number of Representatives of the State of Maryland one fourth of her representation on this floor; and takes away at least one of her members.

Take the State of South Carolina. It is well known that her black population are in the majority. By the census of 1860 she had 68,154 white males over the age of twenty-one, and 92,923 blacks over that age. More than one half of the representation of that State will therefore be excluded.

Mississippi is in the same condition. That State by the same census contained 84,338 white males over twenty-one years of age and 98,510 blacks. So she will lose in the same proportion.

New Hampshire had in 1860 a white male population over the age of twenty-one years of 91,941. How many black males do you suppose she had over that age? Only 149.

The disinterested gentlemen from such States are for changing the basis of representation, so that it shall increase relatively their power here. They propose, while they believe they have the power to do so, to make this great change deeply affecting the rights and interests of States which are denied all right to discuss and vote on such a grave proposition in either house of Congress, and thus reduce by at least twenty-five the number of members to which the States to be affected by this amendment are now by the Constitution and laws of the United States entitled.

But I cannot dwell upon this second section. Considering the fact that eleven States are now denied all representation here, it is an effort outside of constitutional power to change this Government. What did the distinguished gentleman from Massachusetts [Mr. BOUTWELL] declare one month ago on this floor in reference to this question. He used this language:

"Well, sir, I am for a Union and for that Union only is which there is substantial justice among the men and between the States composing it."

Not *the* Union. not the old Union, of which that old flag [pointing to the flag over the Speaker's chair] is emblematic; no, but for "a Union." He further said:

"I accept one fact, and no gentleman can escape the force of that fact, and that is, that these eleven States are not to-day represented in the Congress of this country, and with my consent they never shall be until this inequality is adjusted or its adjustment provided for."

That is the proposition, that these eleven States are not to be represented until the inequality of representation, of which gentlemen now complain, shall be provided for. Provided for, how and by whom? By the remaining twenty-five States through two thirds of their representatives upon the floor of the Senate and House of Representatives. Sir, there is no warrant for such a thing in the Constitution.

But I cannot dwell upon this proposition in the limited time that is allowed me. There is another section in this amendment to which I will now refer. There was a celebrated third section in the proposition which passed this House a month ago. If I understood the distinguished gentleman from Pennsylvania [Mr. STEVENS] correctly this morning, he said he was going to vote for the amendments made

by the Senate and now pending before this House. I ask the Clerk to read what the gentleman said a month ago on this same question. On the day the final vote was taken in this House on the amendments reputed by the joint committee of fifteen the gentleman from Pennsylvania rallied his friends to the support of that celebrated third section. "The third section or nothing," was his cry. I will ask the Clerk to read what the gentleman said on that occasion.

The Clerk read as follows:

"Mr. STEVENS. I should be sorry to find that that provision was stricken out, because before any portion of this can be put into operation there will be, if not a Herod, a worse than Herod elsewhere to obstruct our actions. That side of the House will be filled with yelling secessionists and hissing copperheads. Give us the third section or give us nothing, Do not mock us with the pretense of an amendment which throws the Union into the hands of the enemy before it becomes consolidated."

"Gentlemen say I speak of party. Whenever party is necessary to sustain the Union I say rally to your Party and save the Union. I do not hesitate to say at once, that section is there to save or destroy the

Union party, is there to save or destroy the Union by the salvation or destruction of the Union party."

Mr. FINCK. Thus, according to the declaration of the distinguished gentleman from Pennsylvania, the party which he represents is already destroyed, because he says "that section is there to save or destroy the Union party." It was there for the safety or destruction of the party he so ably represents. But that third section is there no longer. It has perished in the house of its friends, and according to the logic of the gentleman from Pennsylvania, the party he represents is destroyed. Peace to its ashes.

Mr. ELDRIDGE. Amen to its destruction!

Mr. FINCK. Now, Mr. Speaker, what have we got in the place of the old third section? We have a proposition which no intelligent man in this country believes will ever be ratified by three fourths of the States. I ask the Clerk to read the third section.

The Clerk read as follows:

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two thirds of each House remove such disability.

Mr. FINCK. Now, the gentleman from Pennsylvania, whose favorite third section has been killed, proposes to accept in its stead the section just read, which does not deprive the people of the States lately in rebellion of the right to vote, but of the right to hold office. Well, it is very sweeping in its operation. What does it propose? Not only that members of Congress, Cabinet ministers, and judges of the Supreme Court of the United States, who voluntarily went into the rebellion, but that every man who has exercised judicial or legislative functions under the Federal Government or under that States themselves, who went into the rebellion giving it aid and comfort, shall for ever be excluded from holding office, not only under the Federal Government, but under the State governments.

That, sir, is a sweeping clause. Everybody knows that thousands and hundreds of thousands of the people of these States who went into the rebellion and gave it aid and comfort did so involuntarily. They were compelled to do so. Many of them were drafted. You do not except these men from the operation of this provision, but, they are placed side by side with Davis, Breckinridge, Toombs, Slidell, and Mason, and are by this section excluded from holding any office, civil or military, either under the Federal or State governments. I say it is an outrage upon the people of those States who were compelled to give their aid and assistance in the rebellion.

Now, sir, every man knows that from the very moment the jurisdiction of the United States had been successfully resisted and ousted, so that it had no longer power to protect the people within the limits of the so-called confederate power, these people were allowed by the laws of nations to yield obedience to that power which for the time being controlled them, and gave them protection. That doctrine has been established in Great Britain for many generations, and has been recognized by the Supreme Court of the United States.

You propose to do what you have no right to do by law; you propose to make an *ex post facto* law by an amendment to the Constitution. You propose to inflict upon these people a punishment not known to the law in existence at the time any offense may have been committed, but after the offense has been committed; you propose a punishment which the Constitution and laws of the United States do not now provide. You propose to disfranchise men who have applied for in good faith and received pardons from the President.

Now what is the effect of a pardon? It is to make the man pardoned a new man; not merely as the gentleman from Pennsylvania [Mr. STEVENS] would have it, to remove the punishment prescribed by law, but to remove all forfeitures and penalties. Such is the weight of authority of all the decisions of the courts without any exception.

And on this point, I will refer to some authorities, which I quoted on a former occasion in this House. Chief Justice Marshall, in the case of the United States vs. Wilson, 7 Peters, 162, speaking on this subject of pardons in England, said:

"As the power has been exercised from time immemorial by the Executive of that nation whose language is our language, and to whose judicial institutions ours bear a close resemblance, we adopt their principles respecting the operation and effect of a pardon, and look into their books for the rules prescribing the manner in which it is to be used by the person who would avail himself of it."

In 7 Bacon's Abridgment, page 416, it is said:

"It was formerly doubted whether a pardon could do more than take away the punishment, leaving the crime and its disabling consequences unremoved. But it is now settled that a pardon, whether by the king or by act of Parliament, removes not only the punishment but all the legal disabilities consequent on the crime."

The doctrine is thus setted in 1 Bishop on Criminal Law, 713:

"The effect of a full pardon is to absolve the party from all the legal consequences of his crime, and of his conviction direct and collateral, including the punishment whether of imprisonment, pecuniary penalty, or whatever else the law provided."

Also, in 5 Bacon's Abridgment it is laid down:

"It seems agreed that a pardon of treason or felony, even after an attainder, so far clears the party from the infamy, and all other consequences thereof, that he ___ have an action against any who shall afterward call him a traitor or felon, for the pardon makes him, as it were, a new man."

Blackstone says:

"A pardon may be pleaded at bar as at once destroying the end and purpose of the indictment, by remitting the punishment which the prosecution is calculated to inflict."

Also:

"The effect of such a pardon by the king is to make the offender a new man; to acquit him of all corporeal punishment and forfeitures annexed to that offense, for which he obtains his pardon."

Sir, the time has come for the exercise of the spirit of forgiveness, conciliation, and kindness, in order to restore fraternal relations between the sections. Mr. Speaker, I am not only opposed to this third section, but I am at this time, in the present condition of the country, opposed to all amendments to the Constitution.

But the distinguished gentleman from Pennsylvania is afraid that power may pass from the hands of his party, and that Democrats may again be in the majority on this floor.

Sir, I believe the time will soon come when the power shall have passed from the radicals who have abused it, and this Government be once more administered by that glorious old party which administered it so long and so wisely, and under which this nation advanced in greatness and glory without a parallel in history. Gentlemen are accustomed to speak its terms of derision of the Democratic party. Sir, it will survive their assaults. Yes, survive to take charge of and administer this Government again. To heal the wounds which have been inflicted upon the country; to bind closer the bonds of the Union; to gather once more around the common altar of the country, in friendship and patriotic devotion, the Representatives of all the States. Gentleman would do well not to forget that the Democrats of these twenty-five States, in 1864, polled eighteen hundred thousand votes. And they should not forget that to-day, perhaps, these eighteen hundred thousand men have, by accessions of conservative men, swelled into an actual majority of the voters of these twenty-five States.

But, Mr. Speaker, whatever their numbers may be, they are men who have as much interest in the honor, the glory, and prosperity of this country as any other equal number of men within the limits of the Republic. They are to-day, as they have always been, devoted to the Union of these States; and, by the blessing of Heaven, they are determined to maintain that Union, and the Constitution which preserves it, against the assaults of all, whether they come from the North or the South,

Mr. SPALDING. Mr. Speaker, I shall ever consider it the crowning honor of my life that I was permitted, as a humble member of the Thirty-Eighth Congress, to record my vote in favor of that amendment to the Constitution of the United States which has made our whole country, the United States of America, emphatically "the land of the free" as it is confessedly "the home of the brave." And I hope that I may be permitted this day to give one other vote which shall be among the richest legacies I can transmit to my children.

Sir, on the 5th day of January last it fell to my lot to address this House in Committee of the Whole. At the close of my remarks on that occasion, I ventured to state a number of propositions which I supposed would satisfy my constituency in this business of reconstruction. Among those propositions was one to "amend the Constitution of the United States in respect to apportionment of Representatives and direct taxes among the several States of the Union in such manner that 'people of color' shall not be counted with the population making up the ratio, except it be in States where they are permitted to exercise the elective franchise." Among the provisions of the amendment to the Constitution now reported by the committee I find one substantially covering the same ground. I say, as an individual, that I would more cheerfully give my vote if that provision allowed all men of proper age whom we have made free to join in the exercise of the right of suffrage, in this country. But if I cannot obtain all that I wish, I will go heartily to secure all we can obtain.

Again, sir, I said, "Insert a provision in the Constitution prohibiting the repudiation of the national debt, and

also prohibiting the assumption by Congress of the rebel debt." That is also incorporated among the provisions reported from the committee and acted upon by the Senate.

I also said, "Provide in the Constitution that no person who has at any time taken up arms against the United States shall ever be admitted to a seat in the Senate or House of Representatives of Congress." The joint committee and the Senate have adopted a provision which is better by far than the one I proposed; I shall most cordially vote in favor of it.

I have been told that perhaps the close of the third section might be open to misapprehension and misconstruction. I desire very briefly to give my view of that question, as one given to the construing of laws and constitutions by practice and education. The last clause of that section is as follows:

But Congress may, by a vote of two thirds of each House, remove such disability.

Now, it has been claimed by some that this would put it into the power of two thirds of each branch of Congress to annul this amendment of the Constitution after it shall have been adopted. I say that such never could be the construction put upon this provision by any

court under the light of the sun. The section reads:

Sec. 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress or as an officer of the United States, or as is member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid and comfort to the enemies thereof. But Congress may, by a vote of two thirds of each House, remove such disability.

Remove what disability? The personal disability in each individual case, and not to remove the provision of the Constitution itself, which is to stand for all time.

I am satisfied to take this proposed amendment as it is. I take it from the first word of the joint resolution to the last syllable of the proposed amendment; and I give to the whole a hearty 'amen,' and I trust that the vote this day will show that all the Union members of this House here present are actuated by the same sentiments which now inspire my bosom.

Mr. HARDING, of Kentucky. Mr. Speaker, in the very limited time allowed me on this occasion I propose to call the attention of the house more particularly to the fourth section of the proposed amendment to the Constitution of the United States. That section begins with the enunciation of a very sound and whole-some principle. It declares that "the validity of the public debt, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned."

Possibly it might have been better never to have mentioned this question at all. The sacred character of the public debt ought never to be called in question. It would have been well if no man had anticipated that the time could ever arrive when the United States would repudiate its public debt. While, therefore, I give my hearty sanction to that proposition I desire specially to call the attention of the House to the remaining clause of the same section. The first clause is ample, but, the last member of the section operates in the nature of a proviso, limiting and restraining the preceding language, and amounting to direct and open repudiation. The clause upon which I base this assertion is the following:

But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave, but all such debts, obligations, and claims shall be held illegal and void.

Now, sir, this is an open repudiation of a solemn statute of this Congress. I ask the Clerk to read a portion of the twenty-fourth section of an act approved February 24, 1864, entitled "An act to amend an act for enrolling and calling out the national forces."

The Clerk read as follows :

"That all able-bodied male colored persons between the ages of twenty and forty-five years, resident in the United States, shall be enrolled according to the provisions of this act, and of the act to which this is an amendment, and form a part of the national forces; and when a slave of a loyal master shall be drafted and mustered into the service of the United States, his master shall have a certificate thereof, and there-upon such slave shall be free and the bounty of \$100, now payable by law for each drafted man, shall be paid to the person to whom such drafted parson was owing service or labor at the time of his

muster into the service of the United States. The Secretary of War shall appoint a commission in each of the slave States represented in Congress, charged to award to each loyal person to whom a colored volunteer may owe service a just compensation, not exceeding \$300 for each such colored volunteer, payable out of the fund derived from commutations; and every such colored volunteer, on being mustered into the service, shall be free. And in all cases where men of color have been heretofore enlisted, or have volunteered in the military service of the United States, all the provisions of this act, so far as the pay of the bounty and compensation are provided, shall be equally applicable as to those who may be hereafter recruited."

Mr. HARDING. of Kentucky. It will be observed that this proposed constitutional amendment provides that "all debts, obligations. and claims;" " for the loss or emancipation of any slaves" "shall be held illegal and void." But the provision of the act of 1864, which has just been read, provides in so many words that a loyal man whose slave may have been drafted shall receive a bounty of \$100; that at the time such slave is drafted the master shall receive a certificate, upon which he shall draw the money. The next clause provides that the owner of a slave volunteering in the military service of the United States—for at that period of the war it was of great importance to encourage volunteering, shall receive compensation not exceeding \$300.

I care but little about this question except for the principle involved. We in Kentucky have suffered losses and are prepared to suffer losses. But I present this question as a question of good faith. The Government has given this pledge to the owners of slaves who volunteered or were drafted into the Army of the United States; and it is now proposed that this pledge shall be disregarded and set at naught.

Gentlemen may say that this principle of making compensation for slaves is all wrong; but, sir, the law itself declares that it is a "just compensation." The language of the act is:

"The Secretary of War shall appoint a commission in each of the slave States represented in Congress, charged to award to each loyal person to whom a colored volunteer may owe service a just compensation, not exceeding \$300 for each such colored volunteer."

And then the act goes on and designates the very fund out of which this compensation shall be paid—the fund derived from commutations.

Here, then, is a vested right acquired under a law passed by this Congress to encourage volunteering and to recruit the national forces. By this act the faith of the nation is pledged that every loyal owner whose slave may have volunteered or been drafted into the military service of the United States shall receive what Congress then termed a "just compensation not exceeding \$300." Yet by the constitutional amendment now before us it is proposed to repudiate this solemn pledge of the nation's faith.

Now, sir, it is well to be a little cautious on this subject of repudiation. We make no threats on our part. We denounced the sentiment and the very idea of repudiation, but here this very article which proposes to declare that the public debt shall be held inviolably sacred contains a clause which in direct and open terms proposes an utter repudiation of that very law which provided for nothing but "just compensation."

Under the section to which I have referred commissioners were appointed in Maryland and Delaware, and progressed to some extent with their work; but in Missouri and Kentucky no commissioners have yet been appointed. It is now proposed that this public debt—a debt of record, acknowledged to be just and valid—shall be repudiated. Do you suppose, sir, that good faith can be thus violated, and those who commit the violation escape in the future all consequences of their act? If you stir up a hornet's nest like this, may you not be strung by and by? The act which this Congress proposes to do is palpably unjust, Congress itself being the judge, and this proposed amendment being the test.

There is no evasion. It is an open and direct attempt at repudiation. I ask, sir, whether there is any man from Missouri, Maryland, Delaware, or Kentucky who will stultify himself by going for this amendment when it repudiates a recognized debt on the part of these States. Dare you set an example of repudiation? If you do can you ever complain should it become the mad cry throughout the country? If you give the example can you complain when it comes to be followed? The people will say, when repudiation takes place, they are only following your own example. Do you suppose in the West, do you suppose in Missouri, Delaware, Maryland, and Kentucky, with all the burdens they have had to bear during the war, they are going to be tributary to the northern and eastern States? Do you suppose they will continue to pay the heavy share imposed upon them for the public debt when they are denied a small compensation like this?

But as my time is limited, I will not dwell further on that point. I warn gentlemen to pause before they set such an example. You are in power now, triumphantly so, but your actions since you have been here seem to show you are not satisfied that you are going to continue in power. Set an example like this, and can you complain

of repudiation afterward?

In regard to this constitutional amendment a great many things might be said. It is provided in the first section that all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

And the last section provides that Congress shall have power to enforce by appropriate legislation the provisions of this article. This at once transfers all powers from the State governments over the citizens of a State to Congress. You will see that it is only a preparation for an interminable conflict between the Federal and State jurisdictions. We know what the result of this will be, for we have already seen it tested. Will not Congress then virtually hold all power of legislation over your own citizens and in defiance of you?

But how does this agree with the memorable language of the Chicago platform, which declares in so many words that "the right of each State to order and control its own domestic affairs according to its own judgment exclusively is essential to that balance of power on which the perfection and endurance of our political fabric depend?" This amendment is in direct contravention of that platform, because it transfers to Congress from the States all power of control over their own citizens. Let me tell you, you are preparing for revolutions after revolutions. They may be peaceful, and I hope they will. I warn you there will be no peace in this country until each State be allowed to control its own citizens. If you take that from them what care I for the splendid machinery of a national Government? My constituents are able to judge of their own wants, but you propose to take this power from them and to transfer it to Congress, and to let Congress judge of their wants and what legislation should be enacted for their government.

I think I should be sustained by high authority if I were to announce that this amendment is a mere political platform, and that it is not approved by many who will vote for it, because, they do not believe it ought to pass. It is a mere platform upon which the party is to go before the country to fight the political battles of next fall. I should have high authority if I were to say that, those who vote for these constitutional amendments were opposed to them, and that they are about to go before the country with them masked and veiled in hypocrisy and deceit. We have heard from the gentleman just now, in regard to the third section, that the heart and core of the whole matter is gone.

But further than that. The Senator [Mr. SHERMAN] who was referred to by the gentleman who first addressed you to-day, set out in his speech by saying:

*"I shall detain the Senate but for a moment to explain the reasons for the vote I shall give in opposition to what is my own deliberate judgment on the question now pending." * * * * **

"This proposition is simple, plain, and obvious: and yet under the necessity in which we are now placed, I shall feel called upon to vote against it."

And then, after making further comments, he uses this language in regard to the amendment which he is going to vote against:

*"That is a plain and obvious principle, and if that principle was adopted, the southern States would feel no local jealousy. They could not feel any." * * * * **

"Although my opinion is as clear as it can be upon any subject that this amendment is right in itself,

both branches of it, yet as we were compelled to unite on some measure—and we must all yield some of our opinions upon various questions involved—there are five sections in this proposed article—I feel bound to vote against this amendment offered by the Senator from Wisconsin, though in my judgment it would do more than any other to heal the difficulties by which we are surrounded."

There is an open confession that he is about to vote against an amendment which he entertains no doubt would do more to heal our difficulties than anything else!

Now, sir, no man can excuse himself for a thing of that kind; and while I admire the honesty of his confession, that he is doing it for party and political purposes, yet I utterly detest the odious principle that he avows for mere party purposes.

I ask the attention of the House to an extract from another speech, and, mark you, I am not now offering you "copperhead" testimony. The extract is from a speech made by one of your great northern lights, the celebrated Wendell Phillips. I ask the Clerk to read it.

The Clerk read as follows:

"Mr. Phillips hoped the Senate's amendment of the reconstruction plan would meet with an ignominious defeat, and that Massachusetts would reject it. He would welcome every Democrat and copperhead vote to help its defeat. He would go a step further and said, I hope that the Republican party if it goes to the polls next fall on this basis, will be defeated. If this is the only thing that the party has to offer, it deserves defeat. The Republican party to-day seeks only to save its life. God grant that it may lose it!"

* * * * *

"The Republicans go to the people in deceit and hypocrisy, with their faces masked and their convictions hid; I hope to God they will be defeated! I want another serenade, not only to uncover the hidden sentiments of a Cabinet, but to smoke out the United States Senate, that we may see how many of them range by the side of Sumner, Ben. Wade, Judge Kelley, and Thad. Stevens."

Mr. HARDING, of Kentucky. Ay, sir, some of the men named there have since given way and fallen, and are no longer on Phillips's loyal list. As I said, sir, I am not reading southern testimony, or the testimony of copperheads; but from this great northern light, the man who has done more for the Republican party than any other man in the country. He was raised among them; he has affiliated with them; and he cannot be deceived as to their purposes. He charges that this Republican party is going before the country wearing a mask of hypocrisy, with its visage masked and that its object is not to amend the Constitution, but, as Senator SHERMAN says, to save the life of the Republican party; and he says, "God grant they may lose it!" Now, sir, I cannot call in question such authority as this. He must know what he is talking about, and I have had read to you what he says.

[Here the hammer fell.]

Mr. STEVENS. I now, sir, move the previous question.

The previous question was seconded and the main question ordered.

RECONSTRUCTION —AGAIN.

Mr. STEVENS. Mr. Speaker, I do not intend to detain the House long. A few words will suffice.

We may, perhaps, congratulate the House and the country on the near approach to completion of a proposition to be submitted to the people for the admission of an outlawed community into the privileges and advantages of a civilized and free Government.

When I say that we should rejoice at such completion, I do not thereby intend so much to express joy at the superior excellence of the scheme, as that there is to be a scheme—a scheme containing much positive good, as well, I am bound to admit, as the omission of many better things.

In my youth, in my manhood, in my old age, I had fondly dreamed that when any fortunate chance should have broken up for awhile the foundation of our institutions, and released us from obligations the most tyrannical that ever man imposed in the name of freedom, that the intelligent, pure and just men of this Republic, true to their professions and their consciences, would have so remodeled all our institutions as to have freed them from every vestige of human oppression, of inequality of rights, of the recognized degradation of the poor, and the superior caste of the rich. In short, that no distinction would be tolerated in this purified Republic but what arose from merit and conduct. This bright dream has vanished "like the baseless fabric of a vision." I find that we shall be obliged to be content with patching up the worst portions of the ancient edifice, and leaving it, in many of its parts, to be swept through by the tempests, the frosts, and the storms of despotism.

Do you inquire why, holding these views and possessing some will of my own, I accept so imperfect a proposition? I answer, because I live among men and not among angels; among men as intelligent, as determined, and as independent as myself, who, not agreeing with me, do not choose to yield their opinions to mine. Mutual concession, therefore, is our only resort, or mutual hostilities.

We might well have been justified in making renewed and more strenuous efforts for a better plan could we have had the cooperation of the executive. With his cordial assistance the rebel States might have been made model republics, and this nation an empire of universal freedom. But he preferred "restoration" to "reconstruction." He chooses that the slave States should remain as nearly as possible in their ancient condition, with such small modifications as he and his prime minister should suggest, without any impertinent interference from Congress. He anticipated the legitimate action of the national Legislature, and by rank usurpation erected governments in the conquered provinces; imposed upon them institutions in the most arbitrary and unconstitutional manner; and now maintains them as legitimate governments, and insolently demands that they

shall be represented in Congress on equal terms with loyal and regular States.

To repress this tyranny and at the same time to do some justice to conquered rebels requires caution. The great danger is that the seceders may soon overwhelm the loyal men in Congress. The haste urged upon us by some loyal but impetuous men; their anxiety to embrace the representatives of rebels; their ambition to display their dexterity in the use of the broad mantle of charity; and especially the danger arising from the unscrupulous use of patronage and from the oily orations of false prophets, famous for sixty-day obligations and for protested political promises, admonish us to make no further delay.

A few words will suffice to explain the changes made by the Senate in the proposition which we sent them.

The first section is altered by defining who are citizens of the United States and of the States. This is an excellent amendment, long needed to settle conflicting decisions between the several States and the United States. It declares this great privilege to belong to every person born or naturalized in the United States.

The second section has received but slight alteration. I wish it had received more. It contains much less power than I could wish; it has not half the vigor of the amendment which was lost in the Senate. It or the proposition offered by Senator Wade would have worked the enfranchisement of the colored man in half the time.

The third section has been wholly changed by substituting the ineligibility of certain high offenders for the disfranchisement of all rebels until 1870.

This I cannot look upon as an improvement. It opens the elective franchise to such as the States choose to admit. In my judgment it endangers the Government of the country, both State and national; and may give the next Congress and President to the reconstructed rebels. With their enlarged basis of representation, and exclusion of the loyal men of color from the ballot-box, I see no hope of safety unless in the prescription of proper enabling acts, which shall do justice to the freedmen and enjoin enfranchisement as a condition-precedent.

The fourth section, which renders inviolable the public debt and repudiates the rebel debt, will secure the approbation of all but traitors.

The fifth section is unaltered.

You perceive that while I see much good in the proposition I do not pretend to be satisfied with it. And yet I am anxious for its speedy adoption, for I dread delay. The danger is that before any constitutional guards shall have been adopted Congress will be flooded by rebels and rebel sympathizers. Whoever has mingled much in deliberative bodies must have observed the mental as well as physical nervousness of many members, impelling them too often to injudicious action. Whoever has watched the feelings of this house during the tedious months of this session, listened to the impatient whispering of some and the open declarations of others; especially when able and sincere men propose to gratify personal predilections by breaking the ranks of the Union forces and presenting to the enemy a ragged front of stragglers, must be anxious to hasten the result and prevent the demoralization of our friends. Hence, I say, let us no longer delay; take what we can get now, and hope for better things in further legislation; in enabling acts or other provisions.

I now, sir, ask for the question.

The SPEAKER The question before the House is on concurring in the amendments of the Senate; and as it requires by the Constitution a two-thirds vote, the vote will be taken by yeas and nays.

Mr. DEFREES. I ask the consent of the House to print some remarks upon this question, which I have not had an opportunity of delivering.

No objection was made, and leave was granted. [The speech will be found in the Appendix.]

Mr. WRIGHT. I ask the same privilege.

No objection was made, and leave was granted. [The speech will be found in the Appendix.]

The joint resolution as amended by the Senate is as follows:

Joint resolution proposing an amendment to the Constitution of the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two thirds of both Houses concurring,) That the following article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three fourths of said Legislatures, shall be valid as part of the Constitution, namely:

ARTICLE —.

Sec. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Sec. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Sec. 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military under the United States or under any State, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution

of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two thirds of each House, remove said disability.

Sec. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave but all such debts, obligations, and claims shall be held illegal and void.

Sec. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

The question was put on concurring with the amendments of the Senate; and there were—yeas 120, nays 32, not voting 32; as follows:

YEAS—Messrs. Alley, Allison, Ames, Delos R. Ashley, James M. Ashley, Baker, Baldwin, Banks, Barker, Baxter, Beaman, Bidwell, Bingham, Blaine, Boutwell, Bromwell, Buckland, Bundy, Reader W. Clarke, Sidney Clarke, Cobb, Conkling, Cook, Cullom, Darling, Davis, Dawes, Defrees, Delano, Dodge, Donnelly, Briggs, Dumont, Eckley, Eggleston, Eliot, Farnsworth, Farquhar, Ferry, Garfield, Grinnell, Griswold, Hale, Abner C. Harding, Hart, Hayes, Henderson, Higby, Holmes, Hooper, Hotchkiss, Asahel W. Hubbard, Chester D. Hubbard, John H. Hubbard, James R. Hubbell, Jenckes, Julian, Kelley, Kelso, Ketcham, Kuykendall, Laflin, Latham, George V. Lawrence, Loan, Longyear, Lynch, Marvin, McClurg, McKee, McRuer, Mercur, Miller, Moorhead, Morrill, Morris, Moulton, Myers, Newell, O'Neill, Orth, Paine, Perham, Phelps, Pike, Plants, Pomeroy, Price, William H. Randall, Raymond, Alexander H. Rice, John H. Rice, Sawyer, Schenck, Scofield, Shellabarger, Sloan, Smith, Spalding, Stevens, Stilwell, Thayer, Francis Thomas, John L. Thomas, Trowbridge, Upson, Van Aernam, Robert T. Van Horn, Ward, Warner, Henry D. Washburn, William B. Washburn, Welker, Wentworth, Whaley, Williams, James F. Wilson, Stephen F. Wilson, Windom, and the Speaker—120.

NAYS—Messrs. Ancona, Bergen, Bever, Chanler, Coffroth, Dawson, Denison, Eldridge, Finch, Glossbrenner, Grider, Aaron Harding, Hogan, Edwin N. Hubbell, James M. Humphrey, Kerr, Le Blond, Marshall, Niblick, Nicholson, Samuel J. Randall, Ritter, Rogers, Ross, Sitgreaves, Strouse, Taber, Taylor, Thornton, Trimble, Winfield, and Wright—32.

NOT VOTING—Messrs. Anderson, Benjamin, Blow, Brandegee, Broomall, Culver, Deming, Dixon, Goodyear, Harris, Hill, Demas Hubbard, Hulburd, James Humphrey, Ingersoll, Johnson, Jones, Kasson, William Lawrence, Marston, McCullough, McIndoe, Noel, Patterson, Radford, Rollins, Rousseau, Shanklin, Starr, Burt Van Horn, Elihu B. Washburne, and Woodbridge—32.

The SPEAKER. Two thirds of both Houses having concurred in the joint resolution (H. R. No. 127) proposing an amendment to the Constitution of the United States, the joint resolution has passed.

During the roll-call on the foregoing vote,

Mr. KELLEY said: I desire to announce that Mr. BROOMALL, and Mr. WASHBURNE, of Illinois, are paired with Mr. SHANKLIN upon this question.

Mr. LAFLIN said: I wish to announce that my colleague, Mr. VAN HORN, is paired upon this question with Mr. GOODYEAR.

Mr. ANCONA. said: My colleague, Mr. JOHNSON, is absent on account of sickness, and is paired upon this

question with Mr. ROLLINS and Mr. MARSTON, of New Hampshire.

Mr. DARLING said: I desire to state that my colleague, Mr. JAMES HUMPHREY, is detained at home by sickness. If present he would have voted in the affirmative.

Mr. WINFIELD said: My colleague, Mr. RADFORD, is unavoidably detained from his seat. If here he would have voted against the Senate amendment.

Mr. ASHLEY, of Ohio, said: My colleague, Mr. LAWRENCE, has been called home in consequence of the death of his father. If present he would have voted "ay."

Mr. COBB said: Mr. McIndoe is detained from his seat by illness. If here he would vote in the affirmative.

Mr. MOULTON said: My colleague, Mr. INGERSOLL, has gone home under leave of absence from the House.

Mr. HART said: Mr. HUBBARD, of New York, is absent on account of death in his family. If he had been here he would have voted "ay."

Mr. WASHBURN, of Indiana, said: My colleague Mr. HILL, is absent by leave of the House. If here he would have voted in the affirmative.

Mr. ELDRIDGE. I desire to state that if Messrs. Brooks and Voorhees had not been expelled, they would have voted against this proposition. [Great laughter.]

Mr. SCHENCK. And I desire to say that if Jeff. Davis were here, he would probably also have voted the same way. [Renewed laughter.]

Mr. WENTWORTH. And so would Jake Thompson.

The result of the vote having been announced as above recorded,

Mr. STEVENS moved to reconsider the vote by which the amendments of the Senate were concurred in; and also moved to lay the motion to reconsider on the table.

The latter motion was agreed to.

The SPEAKER. The House is now engaged in executing the order of the House to proceed to business upon the Speaker's table.

Reconstruction.

SPEECH OF HON. A. J. ROGERS,
of NEW JERSEY,
IN THE HOUSE OF REPRESENTATIVES,
June 13, 1866.

The House having under consideration the bill (H. R. No. 543) to restore to the States lately in insurrection their full political rights

Mr. ROGERS said:

Mr. SPEAKER: The resolutions proposing an amendment to the Constitution which were the product of the committee of fifteen, and which were accompanied by two bills for passage by Congress, and which were reported by that committee as a settlement of the disagreeing elements among the radicals on the committee, were some weeks ago reported to both Houses for action. This House had the magnanimity to allow a few members to make half-hour speeches on the reported amendment, and then, after consuming a few hours in debate, the master of the House determined to move the previous question, and further debate was stopped. The amendment, precisely as it came from the committee of fifteen, went through the House, under the party whip, by a strict party vote, every radical and pretended would-be-called conservative Republican voting for it. One would have supposed, if he did not know the cringing disposition to radical dictation of the Republican members, that they voted for it because they believed it contained the true principles upon which honest men should base their action, and met with their decided approbation. And as the celebrated committee, noted for its secret inquisitions, had recommended it, and every member upon the committee but the three Democrats agreed to it; it was supposed by honest men that the committee who agreed to it and the radicals who voted for it in this body would at least stand by and sustain it thereafter.

But the amendment reported by the committee has been ignored by its own fathers and a secret inquisition of Senators held over its dead carcass. The third section of the committee's bantling has been struck out, because it was not considered safe to go before the people upon a section which disfranchised the voters of the entire insurgent States until 1870. That amendment, in addition to the third section, simply embodied the gist of the civil rights bill, made the payment of the rebel debt and the claim for pay for slaves void, and gave authority to Congress to pass appropriate legislation to enforce the amendment. The first proposition was tame in iniquity, injustice, and violation of fundamental liberty to the one before us. This proposition makes four million negroes citizens, not only of the United States, but of each and every State, and disqualifies from holding office forever nearly all the influential men of the South, those who are the men having the influence to get through their Legislatures a reasonable proposition. This proposition upsets the old foundation stones of our Republic and laughs and scoffs at the wisdom and patriotism of the framers of our present organic law. It destroys that elementary principle which for over seventy years has lain at the foundation of our happiness, that representation should be founded on population, and introduces a system which says you must allow negroes to vote or be deprived of the share in the Government which the fathers of the Republic designed should be enjoyed by you. I propose, sir, to examine into the reasons for the introduction into this House of this new issue of disunionism and treason to the Constitution of our fathers.

I intend to confine myself mainly to the changes which have been made by a secret caucus of the Senate to the amendment as it was originally presented by the committee of fifteen, and let me say that it is an unpleasant position for a member of Congress to be placed in to make an argument against a measure which has already been arranged by a secret party caucus who have determined to put it through, whatever arguments may be made by its opponents and however patriotic their motives may be. But, sir, I do say, that although upon this side of the House we are in a hopeless minority, we are yet the representatives of two million voters, and of nearly one half of the population of the adhering States, and more than a majority of the whole people of the whole Union; and although the majority can in secret caucus so arrange their tactics as to force the action of the House upon such measures as they may see fit, under the whip of caucus discipline, the minority have no such power,

and all that they can do and what it is their bounden duty to do is to protect and vote against action of this character, and ask the House as the Senate was asked by members of the Opposition, that each man individually

shall exercise his judgment upon this proposition to change the charter of our liberties, according to the dictates of his own conscience, free from the controlling influence of caucus. If you look at the history of this committee of fifteen from its organization down to the present time you will find that the whole object of its organization was to carry into effect party purposes, to affect the fall campaign, and to dismember and dissolve the American Union. Sir, before the House was organized this committee of fifteen had been organized in a secret caucus, with a veil of darkness thrown over it; and in the dark recesses of radicalism with closed doors and darkened windows, where the people were not permitted to look in upon the commencement of proceedings which were designed to overthrow the elementary foundations of their happiness and national greatness, the radical members of the two Houses established, for the first time in the history of this country or of any other republic, a secret committee to control and dictate to the two Houses of Congress what action they should take on the great measures growing out of the contest of the last four years. And, sir, the resolution appointing this committee was hurried through without allowing us one minute for debate, under the whip and spar of party organization.

When the light of day shall break in upon the records of this committee, and the people are permitted to know its proceedings as I know them, it will be seen that it many times agreed to report its final action; but, sir, the fear of not being able to deceive the people with them many times induced it to reconsider. At one time universal negro suffrage was agreed to be reported as a condition to southern representation; but it was soon seen by it that the people could not be deceived by so plain an issue as that, and that to expose the true doctrine of the dominant party in that way would be certain defeat. It finally, on the 31st of January last, made its report, and brought forth its first child, which was to be baptized in the name of philanthropy as the last offspring of a putative father. I supposed the issue was then made up. The command of the committee was given to the radical members of this House, and they had nothing to do but obey. That proposition was a proposed amendment to the Constitution, in substance the same as the section of the article before us regulating representation. The proposition of January 31 declared that if the elective franchise was denied or abridged in any State on account of race or color or previous condition of slavery, then that whole race or color should not be counted in the basis of representation. There was no material difference between that and this. The party lash was again applied, and the previous question used to gag debate, and it passed this House by the overwhelming vote of the entire radical and so-called conservative element, amid the shouting of the negroes and radicals in the galleries and waving of hand-kerchiefs. It went to the Senate, and there the first offspring of the committee was strangled, though not killed, and instead of receiving a two-third vote, as required by the Constitution, it got barely a majority. The committee became nervous, and determined that the party lash should be more thoroughly applied, and that Mr. SUMNER and the radicals who defeated it in the Senate should yield their opposition or be read out of the party. It again sat and finally hatched a new progeny, which contains in substance and effect the same provision as to representation, except that it now says that if the elective franchise be denied in any State to males of the age of twenty-one years representation shall be denied in the proportion that the males thus excluded from voting shall bear to the white and black male inhabitants of the age of twenty-one years.

That second bantling went to the Senate to be christened, but in some particulars it was too weak, and in the one disfranchising the rebels too bold to suit the Senate. It was soon ascertained that it could not get a two-third vote there. The committee of fifteen became gloomy, and it saw it could not please two thirds of the Senate and finally gave up its work of destruction in despair. The radicals saw that a failure to agree upon some proposition would be death to their party. They took new courage, withdrew it from the Senate, and consigned it to a secret caucus of radical Senators. For three days the Senate was silent, while a caucus was convened in a private room away from the view of those who did not agree with the radicals there; and with closed doors, secured by bolts and locks, where even a reporter was not admitted, in the silence of an inquisition of death, they concocted the destruction of the great charter of American freedom, and brought forth, as the emblem of centralization and destruction of the elementary rights of the States, the article now before us.

The Constitution declares that no amendment shall be proposed without the vote of two thirds of both Houses. Yet a mere majority of a party caucus proposes this amendment, and the individual opinion of each member of that party must consent and ratify. That, sir, in effect is an amendment proposed to be submitted to the Legislatures, not by the convictions of holiest minds, but by the coercive power of a caucus majority. Shall our charter of liberty be amended in a secret cabal with closed doors? What would the American people think if we were to close the doors of this House and in secret amend the work of their fathers? They would burst open the doors and demand to know what their servants were doing. The doors of the Senate, after the work of death to constitutional liberty had been inaugurated by this secret cabal, were opened for the consideration of the work. Party corruption had done its work and the dictates of honest consciences had been smothered. Mr. SUMNER and

his followers, who defeated the first proposition, trembled with fear and unblushingly voted this monstrous abortion through the Senate with the aid of those who supported the first. It now became necessary to manipulate the House. It had given its views upon the proposition of the committee.

But the forcing process begun. The House are ordered to cringe and cower before the awful power of the honorable gentleman from Pennsylvania, [Mr. STEVENS.] The orders had been delivered and must be obeyed. Radicalism walks forth with bold impunity, and the last link of conscience is ordered to be broken. But, sir, that caucus we never shall forget; it was the crowning act of the radicals in Congress; it was one more obstacle to the restoration of the Union. If the President of the United States could have looked in upon that body then he would have been reminded of the time when history says the Romans danced and shouted over the downfall of liberty, made memorable by the love of centuries.

I am here to protest against amending the great charter of our liberties by a secret caucus. Every member, under the duty which he owes to his own conscience, to his country, and to his oath, ought not to be controlled by secret caucus, and should vote according to the dictates of his own judgment. He should not be controlled by secret cabals in his action, especially in matters pertaining to the fundamental principles which lie at the base of the liberties of the people, and which were founded in old revolutionary times and handed down to this generation, and which this generation should hand down to their descendants unimpaired as a great jewel and legacy of liberty.

I say this amendment would never pass by the necessary two thirds if free from the control of party whip and party ties. It does not meet the deliberate judgment of two thirds of either House.

To show that my assertion is true, I refer to the language used on the question now before the House by Hon. Mr. SHERMAN on the Doolittle amendment to this proposition. Mr. DOOLITTLE proposed an amendment that representation should be based upon the voting population of the States. That would make representation equal in all the States. The eastern and middle States would not have a controlling influence because of their population of women and children there, as they will have under this. South Carolina, Massachusetts, and other States would stand upon an equal footing before the law in regard to representation, on the broad ground that representation is based upon the voting population of the State.

I ask gentlemen of this House, and especially those on the other side, to listen for a moment to the language of the honorable gentleman, [Mr. SHERMAN,] a member of the Senate of the United States, and one of its most prominent members, who declares in that body that he yields his own judgment, that he gives up his own views, that he abdicates the duty which he believes he owes to his country and his conscience, in order that he may give in his adherence to the doctrines of a secret cabal or caucus of radicals, assembled in secret, away from the gaze of the people of the United States, to concoct this scheme of disunion, and overthrow the fundamental principles of this Government.

The distinguished Senator from Ohio [Mr. SHERMAN] said:

"I shall detain the Senate but for a moment to explain the reasons for the vote I shall give in opposition to what is my own deliberate judgment on the question now pending. The more I think of this question the more I am convinced that the true basis of representation in the present condition of affairs is the number of male citizens who, under the laws of the States, are allowed to vote. This proposition, it seems to me, is a simple one, plain and obvious, which puts a citizen in one State on a footing of precise equality with a citizen in every other State, which equalizes the political power of all citizens, and which will destroy all sectional animosity. If this amendment be adopted, a citizen of the State of Ohio has precisely the same political power with a citizen of the State of Massachusetts or of South Carolina, no more and no less. The same number would be required in each State to elect a member of Congress. The number of citizens could be easily ascertained by the census, and the census rolls could be attested very readily at each annual election. This proposition is simple, plain, and obvious: and yet under the necessity in which we are now placed I shall feel called upon to vote against it."

Again, he said:

"That is a plain and obvious principle, and if that principle was adopted the southern States would feel no local jealousy. They could not feel any. No State and no community would have the right to complain. The laws of the United States would fix the naturalization of the foreigner; birth would fix the citizenship of the native; there could be no controversy. Then every citizen would stand equal before the law, with precisely the same political power, no more and no less. I say, therefore, that this is the only amendment to the propositions now submitted to us that I desire to make; but I feel bound by the action of my political friends to vote against this amendment. I place my vote distinctly on this ground."

I ask you, what security or safety is there for the people of the United States, what confidence for the protection of the lives and liberties of the people of this country is to be placed in the Senate of the United States, a body always heretofore held in regard on account of its wisdom and patriotism, when one of the chief spokesmen of the dominant party in that body rises and tells the people that he votes against his deliberate judgment and the convictions of his conscience, simply because a majority of his brother Senators, members of the same party, have assembled in secret conclave and decided that he shall so vote? Why, sir, if such legislation as this is to be encouraged and upheld, this nation will die and we shall all be wretched mourners around its tomb. What would you think of a jury deliberating on the life of a citizen who should agree to give up their

own convictions of duty because a majority of the jury should so direct, and by their verdict condemn an innocent man to death? The Constitution meant to guard itself against amendments by requiring the deliberate judgment of each Senator and member acting solely each for himself. In Andrew Johnson is our only safety. His policy alone can protect our liberties. I trust that in the providence of God he will have support from the people sufficient to save our country from wreck. I believe he will yet work out a bright destiny for the American people.

Let me tell gentlemen upon the other side of the House that they are now legislating for those who are to come after them; and I appeal to them, although I may appeal in vain, to act upon the deliberate convictions of their judgment and conscience, and not to change the fundamental law of this country and destroy the constitutional equilibrium of the States merely because a secret caucus of a portion of the members of the United States Senate may dictate to them so to do.

There is nothing which the Constitution guards with greater care than an amendment to it. It provides that upon a proposition to amend it, unlike a proposition of minor importance, a two-thirds vote shall be requisite, and that the vote of each Senator or member, "yea" or "nay," upon a proposition of so vitally important a character, shall be recorded upon the Journal. A two-thirds vote of both Houses in favor of a proposition for a constitutional amendment is necessary before such a proposition can be submitted to the States for ratification.

I am here to denounce this attempt to stifle the common sense, reason, judgment, and understanding of the honorable gentlemen upon that side of the House who represent the Republican or so-called Union party of this country. I allow my action to be influenced by no caucus in deciding upon a proposed amendment to the organic law of the land. I have a duty which I owe to my country and to those who are to come after me. I owe it to the sacred memory of the revolutionary dead, whose glorious deeds of courage and patriotism constitute the proudest inheritance of the American citizen, that the work of our fathers should not be amended but by honest individual conviction. In voting upon a question affecting the great Magna Charta of our liberties, the bulwark of our rights, I act from the dictates of an honest judgment, exerted with all the impartiality and candor which God has enabled me to exercise. I yield not to the dictates of any party caucus that may attempt to control my action upon so vital a question. Sir, I say that no Senator, or member of this House, is accountable to any caucus upon a question like this. Our only responsibility is to the hundreds of thousands of brave men who fought the recent war to a triumphant conclusion, and the millions of people throughout the country who are looking to us to act honestly, conscientiously, and wisely upon this great question.

I understand the controlling influence of party caucuses and party conventions. I know they may be necessary in ordinary and primary matters. I am always willing to yield to their action upon mere party principles embodied in a platform, and always do cheerfully sustain and abide by their action. I believe a man is in honor bound to support any convention in which he participates; I mean a mere party convention, held to lay down the doctrines of a party. But he is a parasite who would yield his convictions upon fundamental principles to any caucus or convention or party. I will not support a flagrant violation of the fundamental law of the Government in order that my party may secure or retain political power. If they should ever attempt that, as this article does, I would withdraw from the party organization and declare my soul shall not be seared with the sin of yielding up my own convictions upon fundamental principles to others, who were not more likely to be right than I.

Why, sir, we go so far as to say in this constitutional amendment that everybody who shall be naturalized or born in the United States shall not only be a citizen of the United States, but a citizen of each and every one of the several States. Everybody here knows that under the old Constitution now proposed to be amended a man may be a citizen of the United States and yet have no citizenship in any State.

What is there more vital, what is there more important than for a State to have the control of its own local affairs? Yet here we have a proposition to be submitted to the States to deprive the people of the States of that right. And we not only do that, but it is proposed to exclude nearly all the able men of the South from holding

either Federal or State office. I give you warning that no southern State except Tennessee, where despotism reigns, will ratify or indorse any such amendment. You do not want them to ratify it, and have placed it there on purpose to prevent them from ratifying it.

It not only excludes all those who went voluntarily into the rebellion, but all those who were involuntarily forced into it. I hope some gentleman on the other side will have the justice at least to offer an amendment that those shall not be excluded who were involuntarily forced into the rebellion by conscription or otherwise. You do not intend to allow the South representation at all, and the whole object of this legislation is to give you an excuse to keep the Union divided. If you considered each one of your sections important to the country, you would have submitted to the Legislatures each section as a separate article, so that the States that objected to some could have ratified others. The first twelve amendments to the Constitution were submitted separately and ten were ratified and two rejected. This is a revolutionary movement to forestall the action of the people by calling the present Legislatures together to pass upon them. They never will be ratified by three quarters of the States. None of you expect they will. The repudiation of the rebel debt and the validity of the Federal debt would meet with the approbation of every State; yet you link them with the rest to prevent any from being ratified.