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ONE COUNTRY, ONE CONSTITUTION, AND ONE PEOPLE.

SPEECH

OF

HON. JOHN A. BINGHAM, OF OHIO,

IN THE HOUSE OF REPRESENTATIVES, FEBRUARY 28, 1866,

In support of the proposed amendment to enforce the Bill of Rights.

Mr. BINGHAM said:

Mr. SPEAKER: I approach the discussion of this subject, aware that it will be utterly impossible for me, within the time allotted me by the rules of the House, to do justice to the proposition reported by the joint committee.

I think, sir, that the honorable gentleman from Vermont [Mr. WOODBRIDGE] has uttered words that ought to be considered and accepted by gentlemen of the House, when he says that the action of this Congress in its effect upon the future prosperity of the country will be felt by generations of men after we shall all have paid the debt of nature. I believe, Mr. Speaker, as I have had occasion to say more than once, that the people of the United States have intrusted to the present Congress in some sense the care of the Republic, not only for the present, but for all the hereafter. Your committee, sir, would not have sent to this House for its consideration this proposition but for the conviction that its adoption by Congress and its ratification by the people of the United States is essential to the safety of all the people of every State. I repel the suggestion made here in the heat of debate, that the committee or any of its members who favor this proposition seek in any form to mar the Constitution of the country, or take away from any State any right that belongs to it, or from any citizen of any State any right that belongs to him under that Constitution. The proposition pending before the House is simply a proposition to arm the Congress of the United States, by the consent of the people of the United States, with the power to enforce the bill of rights as it stands in the Constitution today. It "hath that extent—no more."

Gentlemen who seem to be very desirous (although it has very recently come to them) to stand well with the President of the United States, if they will look narrowly into the message which he addressed to this Congress at the opening of the session will find that the proposition pending is approved in that message. The President in the message tells this House and the country that "the American system rests on the assertion of the equal right of

every man to life, liberty, and the pursuit of happiness."

But, sir, that statement rests upon higher authority than that of the President of the United States. It rests upon the authority of the whole people of the United States, speaking through their Constitution as it has come to us from the hands of the men who framed it. The words of that great instrument are:

"The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

"No person shall be deprived of life, liberty or property, without due process of law."

What do gentlemen say to these provisions?

"Oh, we favor that; we agree with the President that the basis of the American system is the right of every man to life, liberty, and the pursuit of happiness; we agree that the Constitution declares the right of every citizen of the United States to the enjoyment of all privileges and immunities of citizens in the several States, and of all persons to be protected in life, liberty, and property."

Gentlemen admit the force of the provisions in the bill of rights, that the citizens of the United States shall be entitled to all the privileges and immunities of citizens of the United States in the several States, and that no person shall be deprived of life, liberty, or property without due process of law; but they say, "We are opposed to its enforcement by act of Congress under an amended Constitution, as proposed." That is the sum and substance of all the argument that we have heard on this subject. Why are gentlemen opposed to the enforcement of the bill of rights, as proposed? Because they aver it would interfere with the reserved rights of the States! Who ever before heard that any State had reserved to itself the right, under the Constitution of the United States, to withhold from any citizen of the United States within its limits, under any pretext whatever, any of the privileges of a citizen of the United States, or to impose upon him, no matter from what State he may have come, any burden contrary to that provision of the Consti-

tution which declares that the citizen shall be entitled in the several States to all the immunities of a citizen of the United States?

What does the word immunity in your Constitution mean? Exemption from unequal burdens. Ah! say gentlemen who oppose this amendment, we are not opposed to equal rights; we are not opposed to the bill of rights that all shall be protected alike in life, liberty, and property; we are only opposed to enforcing it by national authority, even by the consent of the loyal people of all the States.

Mr. Speaker, we have had some most extraordinary arguments against the adoption of the proposed amendment. Among others we have the argument of the gentleman from New Jersey, [Mr. ROGERS.] that he is opposed to it because he says it comes from a joint committee more tyrannical than any tyranny which disgraced the times of Louis XIV. I do not see, if the amendment be good, that that is any objection to its adoption. The gentleman seemed to think it was an objection. He must have spoken sportively; he must have spoken ironically of the committee of which the gentleman himself is a member. The gentleman unwittingly echoed the speech made at the other end of the avenue, and I regret to say by the President, in which he denounced to a party of the gentleman's choosing this joint committee of reconstruction, raised by the action of both Houses of Congress, as a central dictator unconstitutional and unauthorized by law. Why, sir, if the gentleman was not speaking sportively, if he was not speaking ironically, one would suppose he would make haste to withdraw himself from all connection with such a committee as that of which he thus speaks. Surely the gentleman does not mean by this denunciation of the committee to boast, like certain men of eighteen centuries ago, that he is better than other men, who lifted up their hands and thanked God that they were not like other men. If that be the gentleman's opinion of himself, it is time he should exclaim, "My soul, be not thou united with their assembly or sit in the council of the ungodly!"

We have the argument of the gentleman from Pennsylvania, [Mr. RANDALL,] that however just the amendment may be we ought not to pass it in the absence of the Representatives of the eleven States lately in insurrection against the country. Mr. Speaker, when the gentleman comes to reflect upon that remark of his he will see by using it he casts an imputation upon the very men who framed the matchless Constitution of the country under which we are assembled here to-day. It was written in the Articles of Confederation that they "should be articles of perpetual Union" between the original thirteen States who were parties to it. It was written in the Constitution that, if adopted by nine States, it should become the Constitution for those nine States, the covenant of the Articles of Confederation to the contrary notwithstanding. It thence resulted that the Constitution did become the supreme law of some ten States, in the absence of assent thereto on the part of three, and in

direct violation of the express covenant of the Confederation itself. And when the question was asked of one of the fathers of the Constitution, how can you break up the Confederation without the consent of all the States, and against the protest of some of them; how can you break the covenant "of perpetual Union" under the Articles of Confederation? he gave for answer, that the right of the people to self-preservation justifies it; it rests upon the transcendent right of nature, and nature's God. That right is still in the people and has justified their action through all this trial. It is the inherent right of the people. It cannot be taken from them. It has survived the storms and tempests of this great conflict of arms. Hence, if the gentleman's logic be true, that you cannot amend the Constitution without the assent of Representatives in Congress of the rebel States, you could not have passed any bill during all these four years of war, if it affected in any sense the interests of the eleven rebel States.

In that objection the gentleman, like the gentleman who preceded him, is simply following the argument of the President, who has said something of that kind in his veto message of the Freedmen's Bureau bill.

We have, then, sir, the calmer and more deliberate utterance of the honorable gentleman from New York, [Mr. HALE.] He says that the Constitution does contemplate equality in the protection of the rights of life, liberty, and property in every State. He admits it does contemplate that the citizen of each State shall be entitled to all the privileges and immunities of citizens in the several States. It will be noticed, the gentleman takes care not to utter one single word in opposition to that part of the amendment which seeks the enforcement of the second section of the fourth article of the Constitution of the United States, but by his silence he gives his assent to it. But the gentleman reiterates the old cry of State rights, and says, "You are impairing State rights." I would like to know, and when the gentleman comes to make another argument on this subject, I respectfully ask him to inform us whence he derives the authority for supposing, if he does so suppose, that any State has the right to deny to a citizen of any other State any of the privileges or immunities of a citizen of the United States. And if a State has not the right to do that, how can the right of a State be impaired by giving to the people of the United States by constitutional amendment the power by congressional enactment to enforce this provision of their Constitution?

The gentleman did not utter a word against the equal right of all citizens of the United States in every State to all privileges and immunities of citizens, and I know any such denial by any State would be condemned by every sense of his nature. If a State has not the right to deny equal protection to any human being under the Constitution of this country in the rights of life, liberty, and property, how can State rights be impaired by penal prohibitions of such denial as proposed?

But, says the gentleman, if you adopt this amendment you give to Congress the power to enforce all the rights of married women in the several States. I beg the gentleman's pardon. He need not be alarmed at the condition of married women. Those rights which are universal and independent of all local State legislation belong, by the gift of God, to every woman, whether married or single. The rights of life and liberty are theirs whatever States may enact. But the gentleman's concern is as to the right of property in married women.

Although this word property has been in your bill of rights from the year 1789 until this hour, who ever heard it intimated that anybody could have property protected in any State until he owned or acquired property there according to its local law or according to the law of some other State which he may have carried thither?

As to real estate, every one knows that its acquisition and transmission under every interpretation ever given to the word property, as used in the Constitution of the country, are dependent exclusively upon the local law of the States, save under a direct grant of the United States. But suppose any person has acquired property not contrary to the laws of the State, but in accordance with its law, is he not to be equally protected in the enjoyment of it, or is he to be denied all protection?

The gentleman seemed to think that all persons could have remedies for all violations of their rights of "life, liberty, and property" in the Federal courts.

I ventured to ask him yesterday when any action of that sort was ever maintained in any of the Federal courts of the United States to redress the great wrong which has been practiced, and which is being practiced now in more States than one of the Union under the authority of State laws, denying to citizens therein equal protection or any protection in the rights of life, liberty, and property.

Mr. Speaker, on this subject I refer the House and the country to a decision of the Supreme Court, to be found in 7 Peters, 247, in the case of *Barron vs. The Mayor and City Council of Baltimore*, involving the question whether the provisions of the fifth article of the amendments to the Constitution are binding upon the State of Maryland and to be enforced in the Federal courts. The Chief Justice says:

"The people of the United States framed such a Government for the United States as they supposed best adapted to their situation and best calculated to promote their interests. The powers they conferred on this Government were to be exercised by itself; and the limitations of power, if expressed in general terms, are naturally, and we think necessarily, applicable to the Government created by the instrument. They are limitations of power granted in the instrument itself, not of distinct governments.

"If these propositions be correct, the fifth amendment must be understood as restraining the power of the General Government, not as applicable to the States."

I read one further decision, the case of the *Lessee of Livingston vs. Moore and others*, 7 Peters, page 551. The court say:

"As to the amendments of the Constitution of the United States, they must be put out of the case

since it is now settled that those amendments do not extend to the States; and this observation disposes of the next exception, which relies on the seventh article of those amendments."

What have gentlemen to say to that? Sir, I stand relieved to-day from entering into any extended argument in answer to these decisions of your courts, that although as ruled the existing amendments are not applicable to and do not bind the States, they are nevertheless to be enforced and observed in States by the grand utterance of that immortal man, who, while he lived, stood alone in intellectual power among the living men of his country, and now that he is dead, sleeps alone in his honored tomb by the sounding sea. I refer to that argument never yet answered, and never to be answered while human language shall be spoken by living man, wherein Mr. Webster says:

"There is no language in the Constitution applicable to a confederation of States. If the States be parties, as States, what are their rights, and what their respective covenants and stipulations? And where are their rights, covenants, and stipulations expressed? The States engage for nothing, they promise nothing. In the Articles of Confederation, they did make promises, and did enter into engagements, and did plight the faith of each State for their fulfillment, but in the Constitution there is nothing of that kind. The reason is, that in the Constitution it is the people who speak, and not the States." * * * * "They address themselves to the States and to the Legislatures of States in the language of injunction and prohibition. The Constitution utters its behests in the name and by authority of the people, and it does not address the States any plights, promises, or stipulations." * * * "It is void and unavailing as to the individual conscience. It is no more than a mere assent in the Legislature of a State who shall not have taken his solemn oath to support the Constitution of the United States. From the violation of this oath no State power can derive force." — *Webster's Works*, p. 471.

Why, I ask, should not the "injunctions and prohibitions," addressed by the people in the Constitution to the States and the Legislatures of States, be enforced by the people through the proposed amendment? By the decisions read the people are without remedy. It is admitted in the argument of Mr. Webster, just cited, that the State Legislatures may by direct violations of their duty and oaths avoid the requirements of the Constitution, and thereby do an act which would break up any government.

Those oaths have been disregarded; those requirements of our Constitution have been broken; they are disregarded to-day in Oregon; they are disregarded to-day, and have been disregarded for the last five years in every one of the eleven States recently in insurrection.

The question is, simply, whether you will give by this amendment to the people of the United States the power, by legislative enactment, to punish officials of States for violation of the oaths enjoined upon them by their Constitution? That is the question, and the whole question. The adoption of the proposed amendment will take from the States no rights that belong to the States. They elect their Legislatures; they enact their laws for the punishment of crimes against life, liberty, or property; but in the event of the adoption of this amendment, if they conspire together to enact laws refusing equal protection to life, liberty, or property,

the Congress is thereby vested with power to hold them to answer before the bar of the national courts for the violation of their oaths and of the rights of their fellow-men. Why should it not be so? That is the question. Why should it not be so? Is the bill of rights to stand in our Constitution hereafter, as in the past five years within eleven States, a mere dead letter?

Mr. Speaker, it appears to me that this very provision of the bill of rights brought in question this day, upon this trial before the House, more than any other provision of the Constitution, makes that unity of government which constitutes us one people, by which and through which American nationality came to be, and only by the enforcement of which can American nationality continue to be.

The imperishable words of Washington ought to be in the minds of all of us touching this great question whether the unity of the Government shall be enforced hereafter by just penal enactments when the Legislatures of States refuse to do their duty or keep inviolate their oath. Washington, speaking to you and to me and to the millions who are to come after us, says:

"The unity of Government which constitutes you one people is a main pillar in the edifice of your real independence, the support of your tranquillity at home, your peace abroad, of your safety, of your prosperity, of that very liberty which you so highly prize."

Is it not essential to the unity of the people that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States? Is it not essential to the unity of the Government and the unity of the people that all persons, whether citizens or strangers, within this land, shall have equal protection in every State in this Union in the rights of life and liberty and property?

Why, sir, what an anomaly is presented to-day to the world! We have the power to vindicate the personal liberty and all the personal rights of the citizen on the remotest sea, under the frowning batteries of the remotest tyranny on this earth, while we have not the power in time of peace to enforce the citizens' rights to life, liberty, and property within the limits of South Carolina after her State government shall be recognized and her constitutional relations restored.

I commend especially to the honorable gentleman from New York [Mr. HALE] the paper issued by his distinguished fellow-citizen, when he was acting as Secretary of State for the United States, the lamented Marey, touching the protection of the rights of Martin Koszta, a citizen of the United States, whose rights were invaded abroad, within the jurisdiction of the empire of Austria. Commodore Ingraham gave notice that he would fire upon their town and their shipping unless they respected the rights of a declared citizen of the American Republic. You had the power to enforce your demand. But you are powerless in time of peace, in the presence of the laws of South Carolina, Alabama, and Mississippi, as States admitted and restored to the Union, to enforce

the rights of citizens of the United States within their limits.

Do gentlemen entertain for a moment the thought that the enforcement of these provisions of the Constitution was not to be considered essential? Consider the triple safeguards interposed in the Constitution itself against their denial. It is provided in the Constitution, in the first place, that "this Constitution," the whole of it, not a part of it, "shall be the supreme law of the land." Supreme from the Penobscot in the farthest east, to the remotest west where rolls the Oregon; supreme over every hamlet, every State, and every Territory of the Union.

As the whole Constitution was to be the supreme law in every State, it therefore results that the citizens of each State, being citizens of the United States, should be entitled to all the privileges and immunities of citizens of the United States in every State, and all persons, now that slavery has forever perished, should be entitled to equal protection in the rights of life, liberty, and property.

As a further security for the enforcement of the Constitution, and especially of this sacred bill of rights, to all the citizens and all the people of the United States, it is further provided that 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. The oath, the most solemn compact which man can make with his Maker, was to bind the State Legislatures, executive officers, and judges to sacredly respect the Constitution and all the rights secured by it. And yet there is still another provision lest a State Legislature, with the approval of a State Executive, should, in disregard of their oath, invade the rights of any citizen or person by unjust legislation, violative alike of the Constitution and the rights secured by it, which is very significant and not to be overlooked, which is,

"And the judges of every State shall be bound by the Constitution of the United States, anything in the constitution and laws of any State to the contrary notwithstanding."

With these provisions in the Constitution for the enforcement in every State of its requirements, is it surprising that the framers of the Constitution omitted to insert an express grant of power in Congress to enforce by penal enactment these great canons of the supreme law, securing to all the citizens in every State all the privileges and immunities of citizens, and to all the people all the sacred rights of person—those rights dear to freemen and formidable only to tyrants—and of which the fathers of the Republic spoke, after God had given them the victory, in that memorable address in which they declared, "Let it be remembered that the rights for which America has contended were the rights of human nature?" Is it surprising that essential as they held the full security to all citizens of all the privileges and immunities of citizens, and to all the people the sacred rights of person, that having proclaimed them they left their lawful enforce-

ment to each of the States, under the solemn obligation resting upon every State officer to regard, respect, and obey the constitutional injunction?

What more could have been added to that instrument to secure the enforcement of these provisions of the bill of rights in every State, other than the additional grant of power which we ask this day? Nothing at all. And I am perfectly confident that that grant of power would have been there but for the fact that its insertion in the Constitution would have been utterly incompatible with the existence of slavery in any State; for although slaves might not have been admitted to be citizens they must have been admitted to be persons. That is the only reason why it was not there. There was a fetter upon the conscience of the nation. Thank God, that fetter has been broken; it has turned to dust before the breath of the people, speaking as the voice of God and solemnly ordaining that slavery is forever prohibited everywhere within the Republic except as punishment for crime on due conviction. Even now for crimes men may be made slaves in States, notwithstanding the new amendment.

As slaves were not protected by the Constitution, there might be some color of excuse for the slave States in their disregard for the requirement of the bill of rights as to slaves and refusing them protection in life or property; though, in my judgment, there could be no possible apology for reducing men made like themselves, in the image of God, to a level with the brutes of the field, and condemning them to toil without reward, to live without knowledge, and die without hope.

But, sir, there never was even colorable excuse, much less apology, for any man North or South claiming that any State Legislature or State court, or State Executive, has any right to deny protection to any free citizen of the United States within their limits in the rights of life, liberty, and property. Gentlemen who oppose this amendment oppose the grant of power to enforce the bill of rights. Gentlemen who oppose this amendment simply declare to these rebel States, go on with your confiscation statutes, your statutes of banishment, your statutes of unjust imprisonment, your statutes of murder and death against men because of their loyalty to the Constitution and Government of the United States.

That is the issue that is before the American people; and God helping me, without respect for persons in high places who show a disposition to betray this great cause, I will not betray it, so long as it is given me to know the right.

Pending this great issue, what utterances do we hear? You have, in the first place, the utterances of him whom we elected Vice President of the United States, and who is now, by the work of an assassin, President of the United States, and of whom I have been accustomed to speak with great respect. The House and the country will remember that at the opening of this session I declared in my place here that if an issue was to be made between the President and the Representatives of the people it

must be made by him and not by us. It has been made by him.

I trust in God that for his own sake, for the sake of his country, and of the friends who gave him his high position, he will retrace his steps; but whether he does or does not, I trust that the American people will not strike the word "forward" from their vocabulary, but will go right on to the consummation of the great work which Providence has committed to their hands; that is, the enforcement of their Constitution in every State, in every Territory, and upon every sea, wherever our flag floats, whoever may oppose at home or abroad.

What, in brief, are those utterances? Why, says the President in his speech—not in his message to Congress, but in his speech, which is received with so many laudations in certain quarters, and over which, it seems, the gentleman from New Jersey [Mr. ROGERS] and his party held a sort of general jubilation—"Let all those lately in insurrection against the Government and laws of the United States, who will now declare their allegiance and take the oath, be admitted into this Union, and by their representatives into the councils of this nation."

Take the oath! What oath? Not the oath of the Constitution which they have broken, but the oath prescribed by the President himself, and which, except in the tribunals of military justice, has no more force than the paper upon which it is printed. "Swear the oath!" "Swear him, and let him go!" It would be about as remarkable, under existing circumstances, to award a vote to a people which was the symbol of South Carolina treason—the rattlesnake—by its go.

What have we more touching this great issue? The venerable Secretary of State, in the city of New York, makes a speech, and in the course of that speech gives to the country another of his prophecies. I have been accustomed to sustain, in my humble way, that gentleman in the past, and I am accustomed now to speak of him most gratefully for the services he has rendered to the country, by his surpassing skill as a diplomatist, and by his undoubted fidelity to the interests of his country in his great office as minister of foreign affairs. What I say of him now I speak with regret and sorrow, not in anger. What I speak of him I say from a sense of duty to a cause which I think imperiled by his speech. It is fit the people should not be deceived. "The man who speaks the truth is greater than a king."

Need the people of this country be reminded of what they do know, that he is no prophet, that his other memorable prophecies have failed? I remember, sir, that when the foundations of the Republic were rocking beneath the mustering tread of the armed hosts who were about to strike at the nation's life, that gentleman in the same city of New York uttered his oracular declaration that the rising storm would last only sixty days.

Mr. Speaker, there is one further remark I desire to make here, and I trust it will not be deemed out of order. It has been announced by persons in high places unofficially that no

amendment should be made to the Constitution; that there is no danger to be apprehended from the million men lately in arms against the Republic; that all the lately rebellious States should be admitted at once to representation without any condition; that the loyal people of the United States who have saved their Government from overthrow by the wager of battle have no right to require any security for the future; that nothing remains for them to do but to kill the fatted calf and to welcome back the returning prodigal traitors by the million.

In that connection, in order to show the danger to the peace of the country, I beg leave to say further, that at no distant day I have no doubt testimony will be adduced to satisfy every honest man in this country, who wishes well to the Government and the Constitution that there is now a conspiracy extending through every State lately in insurrection, and perchance beyond their limits, among these returning prodigal rebels for whom we are invited to kill the fatted calf, to take possession of the legislative power of this country, and accomplish by corrupt legislation what they failed to accomplish by arms. In support of this statement I will read the following. It is taken from the Norfolk (Virginia) Post:

"GREAT VICTORY FOR THE SOUTH.—Since the morning of July 22, 1861, when the news of the great southern victory achieved by Beauregard over McDowell and the awful rout of the Federal Army on the plains of Manassas was borne through the South on the wings of the wind as it were, carrying joy and jubilation into every loyal southern household and gladdening every true southern heart, there has been no news received with so much rejoicing by the people of the South as that contained in the dispatch informing them the President had vetoed the Freedmen's Bureau bill.

"This is the greatest victory they have achieved in the war—greater than any of the feats of arms of Stonewall Jackson or of Robert E. Lee; and it has given them more pleasure than had General Lee been elected Governor of Virginia. They have found an ally in the President worth more to them than the alliance of France or England, and they now begin to see, even as they saw foreshadowed at Manassas, the final triumph of the great southern cause."

It has been already intimated that the fatted calf is to be killed at the North to welcome back the returning prodigals—traitors whose hands are red with the blood of murder and assassination, who for four years struck at the life of your country and at the life of its defenders. Whether the publisher of that paper at Norfolk who uttered the words which have been read was speaking ironically as to this conspiracy at the South, or whether as the accredited organ of the conspirators, it makes not a particle of difference. It is, in my judgment, according to the declared purpose of those men. They are ready to kill the fatted calf if Andrew Johnson will only forget his former utterances, wherein he said that treason is a crime that must be made odious and traitors must be punished; that traitors are no longer citizens and should not be permitted to participate in the reconstruction and reorganization of the States; and especially if he would lend himself to that black and villainous suggestion which finds a place in the columns of the Chicago Times—a paper which in its day was, I believe, sup-

pressed for its treasonable utterances by order of General Burnside—that the President would do well to drive the Representatives of the people by an armed *posse* from the Hall of Representatives.

Mr. LATHAM. I desire to ask the gentleman from Ohio, [Mr. BINGHAM,] whether he proposes to make the adoption of this constitutional amendment by the constitutional majority of the States a condition precedent to admitting the Representatives of any of the eleven States.

Mr. BINGHAM. I beg leave to state that every endeavor has been made by that committee, without regard to this amendment, to present the case of Tennessee; so that by the sovereign act of the American people, through the joint act of Congress, the constitutional relations of the State of Tennessee as a State of this Union might be restored. I am not at liberty to state, even if I knew, what the committee intend to do in regard to that State. I do know that the matter is still before us; and that we have given it attention.

But that does not excuse us from the consideration of this question. The adoption of this amendment is essential to the protection of the Union men of Tennessee; those grand, true men, who "unshaken, unseduced, unterrified," their loyalty they kept, amid the howl of treason, whose infernal enginery shook the continent. Every honorable man here from Tennessee to-day—and I believe they are all honorable men—will bear me witness when I say that the Union men of Tennessee to-day have no security except from the armed presence of the United States Government there. And when the State shall be restored, and the troops of the Government withdrawn, they will have no security in the future except by force of national laws giving them protection against those who have been in arms against them.

Will any man tell me how forty thousand loyal and true men in Tennessee can hold the power in that State against ninety thousand who, in social position, are equal to them, and who in wealth are greatly superior to them? And I beg leave to say further, that it will prove to be the fact that the rebels will be found in a majority of three to one or four to one in every one of the States that have been engaged in the rebellion, except in Tennessee.

How will you prevent that overpowering majority from taking possession of those reconstructed governments? Do you call it a "republican government" within the meaning of the Constitution to maintain a minority in power indefinitely in a State by Federal bayonets? I do not, nor does any intelligent man. What then? Why, according to the programme before us, those rebels are all to be sworn in—sworn in upon an oath that makes no conditions, as announced in the President's speech, save that they will hereafter support the Constitution. They are all to be sworn in and to be allowed to assume the control of their respective States. Where is the power in Congress, unless this or some similar amendment

be adopted, to prevent the reënactment of those atrocious statutes of banishment and confiscation and imprisonment and murder under which people have suffered in those States during the last four years? Let some man answer. Why, sir, the gentleman from New York [Mr. HALE] himself yesterday gave up the argument on this point. He said that the citizens must rely upon the State for their protection. I admit that such is the rule under the Constitution as it now stands.

I beg leave to read, in confirmation of the truth of what I say, an utterance made in the hearing of the whole people of this country in 1788, when the Constitution was on trial for its deliverance. I read from No. 45 of the *Federalist*, a paper written by James Madison:

"The powers reserved to the Federal States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State."

I submit that this is the text of the Constitution, except as to the new amendment prohibiting slavery, and providing for legislation to prevent it except as punishment for crime. It stands as the ruling of the Supreme Court of the United States in the great case of *McCullough vs. The State of Maryland*, in 4 *Wheaton*. It stands as the ruling of the same tribunal in the case of *Ogden vs. Gibbons*, in 9 *Peters*. It stands, in short, as the uniform ruling of the Supreme Court of the United States, concurring with the continued action of the other departments of the Government from the year 1789 till this hour, there being no law anywhere upon our statute-books to punish penally any State officer for denying in any State to any citizen of the United States protection in the rights of life, liberty, and property. It stands as the very text of the Constitution itself, which declares that—

"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."

The word "powers" controls the whole question. The Government of the United States has no legislative powers, save the express grants and the general grant to pass all laws which shall be necessary and proper to carry into execution all other powers vested by the Constitution in the Government of the United States, or in any department or any officer thereof, and the implied powers necessary to carry the express powers into effect. A grant of power, according to all construction, is a very different thing from a bill of rights. In support of what I have said on this point I ask attention to the following citations:

McCullough vs. Maryland, 4 *Wheaton*, 405, Marshall, C. J., says:

"The Constitution of the United States is one of limited and expressly delegated powers, which can only be exercised as granted, or in cases enumerated."

Speaking of the authority given to Congress by the last clause of the first article, eighth section, of the Constitution, Judge Story in his *Commentaries*, section 1238, says:

"The plain import of this clause is, that Congress

shall have all the incidental and instrumental powers necessary and proper to carry into execution all the express powers. It neither enlarges a power specifically granted, nor is it a grant of a new power to Congress."

In *Martin vs. Hunter's Lessee*, 1 *Wheaton*, 326, it is said:

"The Government of the United States can claim no powers which are not granted to it by the Constitution, and the powers actually granted are such as are expressly given or given by necessary implication."

In *Gibbons vs. Ogden*, 9 *Wheaton*, 187, Chief Justice Marshall, speaking of the Constitution, says:

"This instrument contains an enumeration of powers expressly granted by the people to their Government."

In *Kent's Commentaries*, volume one, pages 388–390, there is this language:

"The correct principle is that whenever the terms in which the power was granted to Congress, or the nature of the power required that it should be exclusively exercised by Congress, the subject was as completely taken away from the State Legislatures as if they had been expressly forbidden to act upon it."

You have the express power to define the punishment of treason; the express power to punish the counterfeiting of coin or securities of the United States; the express power to define and punish piracies and felonies committed upon the high seas, and offenses against the law of nations; exclusive legislative power within this District; and the power to govern all Territories; but what is the express power to define and punish crimes committed in any State by its officials, officers or persons as violators of the rights of citizens and persons as declared in the Constitution? And from what expressly delegated power in the Constitution can any such power be implied? Passing the anti-slavery amendment, is there any one prepared to say that the bill of rights confers express legislative power on Congress to punish State officers for a willful and corrupt disregard of their oaths and oppressive and flagrantly unjust violations of the declared rights of every citizen and every free man in every free State? The words of Madison cited are very significant: "The powers reserved to the several States will extend to all the objects which concern the lives, liberties, and properties of the people." The fact is that Congress has never by penal enactment in all the past attempted to enforce these rights of the people in any State of the Union.

Sir, the great question is presented for the consideration of the House and the country, shall these States, all of them, be restored in their present condition, and with no new securities taken by the people for the future? Shall South Carolina be thus restored, for example, nine tenths of her people who vote having been rebels in arms or directly engaged in rebellion against the country, and her Governor having been an active member of the rebel senate at Richmond during the four years' trial, now acting Governor over the loyal men of the State? Is that State to be restored without the power in Congress to protect the few loyal white men there against State statutes of confiscation and statutes of banishment? And for the emancipated

slaves of South Carolina are you to have no power save to prohibit their reduction again to slavery except as punishment for crimes against the laws of South Carolina? Let some gentleman who proposes this amendment stand up in his place and answer to the country how, after these States are restored to political power, the Government of the United States can by law intervene except as to slavery, under the Constitution of the United States, as it now stands, to protect the loyal white minority or the loyal but disfranchised colored majority in that State against banishment?

I call the attention of the House also to the condition of Mississippi. How is it that a man who fought in the armies against the country throughout all these years of conflict—a man who, I believe, had a rebel commission as brigadier general—is elected Governor of that State, and is now Governor over that people? The people who would elect Humphreys Governor are doubtless the people who followed Humphreys in the war for treason, in the war for the dismemberment of the Union. Now, we are told by these gentlemen to make haste to restore all of those States and permit them to reenact by law the crimes which they have inflicted by force for the last four years.

I think there are exceptions among those States. I think there is a greater proportion of loyal men in some than in others. I think it may become the accepted policy of this House, and I trust it will, to admit such States as are so far advanced in reconstruction and reorganization and an honest return to allegiance under the Government as will enable them to consolidate their strength and maintain a republican constitutional State government.

It seems to me equally clear if you intend to have these thirty-six States one under our Constitution, if you intend that every citizen of every State shall in the hereafter have the immunities and privileges of citizens in the several States, you must amend the Constitution. It cannot be otherwise. Restore those States with a majority of rebels to political power, and they will cast their ballots to exclude from the protection of the laws every man who bore arms in defense of the Government. The loyal minority of white citizens and the disfranchised colored citizens will be utterly powerless. There is no efficient remedy for it without an amendment to your Constitution. A civil action is no remedy for a great public wrong and crime.

Nobody dreams, if we admit these States unqualifiedly, but some of their officials would violate their oaths as they have heretofore done and clothe themselves with perjury as with a garment in order to sweep away the rights of loyal men, and be avenged upon them for their fidelity to the sacred cause of the Constitution, and the laws.

Sir, we are no longer permitted to doubt that whole communities are capable of so great infamy and perfidy. They did this in eleven of these States five years ago, and if they did it once may they not do it again?

We are told they will be in terror of the prowess of your arms. Ay, they have occa-

sion to be in terror of the prowess of your arms, and they will doubtless avoid any such conflict again. But the point I desire to make clear is, that unless you put them in terror of the power of your laws, made efficient by the solemn act of the whole people to punish the violators of oaths, they may defy your restricted legislative power when reconstructed; they may dismember your Union and rend it into fragments and drive into banishment every loyal man in all those rebel States, and hold as their heritage a territory half as large as continental Europe without firing a gun or daring again to commit the overt act of treason. With these convictions of the power of the rebel population when their States are fully restored, I urge this amendment upon the consideration of the House and upon the consideration of the country. I pray gentlemen to consider well the vote they may give now or at a future day when we come to act finally upon this measure.

The present rejection of this measure and the admission to full representation of all the rebel States now, may bring your institutions into peril. Whatever may be the result I shall not despair of the Republic. My trust will be in the people to whose decision I ask you to commit this amendment—that great people who saved their imperiled Constitution amid the fire and tempest of battle. They will, I trust, though it may be not without additional sacrifice, correct all errors, perfect their Constitution, enforce by just and equal laws all its provisions, and so fortify and strengthen the Republic that it will stand unmoved until empires and nations perish.

Mr. Speaker, I speak in behalf of this amendment in no party spirit, in no spirit of resentment toward any State or the people of any State, in no spirit of innovation, but for the sake of a violated Constitution and a wronged and wounded country whose heart is now smitten with a strange, great sorrow. I urge the amendment for the enforcement of these essential provisions of your Constitution, divine in their justice, sublime in their humanity, which declare that all men are equal in the rights of life and liberty before the majesty of American law.

Representatives, to you I appeal, that hereafter, by your act and the approval of the loyal people of this country, every man in every State of the Union, in accordance with the written words of your Constitution, may, by the national law, be secured in the equal protection of his personal rights. Your Constitution provides that no man, no matter what his color, no matter beneath what sky he may have been born, no matter in what disastrous conflict or by what tyrannical hand his liberty may have been cloven down, no matter how poor, no matter how friendless, no matter how ignorant, shall be deprived of life or liberty or property without due process of law—law in its highest sense, that law which is the perfection of human reason, and which is impartial, equal, exact justice; that justice which requires that every man shall have his right; that justice which is the highest duty of nations as it is the imperishable attribute of the God of nations.



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