

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 6: The Civil War and Reconstruction—Equality/Race/Implementing the Thirteenth Amendment

The Debate over the Civil Rights Act of 1866 (expanded)¹

The Civil Rights Act of 1866 prohibited Black Codes and guaranteed civic equality to persons of color. The crucial provisions mandated that states provide persons of color with the same rights and liberties “for the security of persons and property as is enjoyed by white citizens.” Persons of color who claimed their legal rights were violated were authorized to remove the lawsuits from state to federal courts, where they were more likely to gain a sympathetic hearing. The Civil Rights Act of 1866 did not outlaw all forms of racial discrimination. Charles Sumner failed to convince fellow partisans to include voting rights or pass additional legislation enfranchising free persons of color. Most Republicans agreed that the Civil Rights Act did not prohibit laws banning interracial marriages. President Johnson vetoed the measure on March 27, 1866. Several weeks later, a two-thirds majority in both the House of Representatives and Senate overrode the veto. This was the first veto override in American history.

The Civil Rights Act of 1866 protected the rights of persons of color by intertwining those rights with the rights of white persons. Rather than declare that all persons, including persons of color, had certain fundamental rights, Congress decreed that persons of color would enjoy the same rights as white persons. White voters could restrict the liberty of persons of color only by restricting their liberty to the same degree. What do you think of this strategy of using equal protection to protect substantive rights? Is this strategy likely to be an effective means for protecting the rights of persons who cannot vote? If you were in Congress in 1866, would you have reluctantly settled for “half a loaf” or would you have insisted that the Civil Rights Act include voting rights?

Republican Congressman John Bingham was one of the few Republicans who thought Congress did not have power under the Thirteenth Amendment to pass the Civil Rights Act of 1866. Bingham was one of the major architects of the Fourteenth Amendment. How should his speech on the Civil Rights Act influence interpretation of both post-Civil War Amendments?

OXFORD
UNIVERSITY PRESS

An Act to Protect All Persons in the United States in their Civil Rights, and Furnish the Means for their Vindication²

Be it Enacted . . . 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; and such citizens of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right in every State and Territory in the United States to make and enforce contracts; to sue, be parties, and give evidence; to inherit, purchase, lease, sell, hold, and convey real and personal property; and to full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding.

. . .

¹ Congressional Globe, 39th Cong., 1st Sess. (1866), 474–76, 673–87, 1291–93, 1755–61, 1782–85, 1804, 1809.

² 14 U.S. Stat. 27, 27 (1866).

SEC. 3. That the district courts of the United States, within their respective districts, shall have, exclusively of the courts of the several States, cognizance of all crimes and offenses committed against the provisions of this act, and also, concurrently with the circuit courts of the United States, of all causes, civil and criminal, affecting persons who are denied or cannot enforce in the courts or judicial tribunals of the State or locality where they may be any of the rights secured to them by the first section of this act; and if any suit or prosecution, civil or criminal, has been or shall be commenced in any State court against any such person, for any cause whatsoever, or against any officer, civil or military, or other person, for any arrest or imprisonment, trespasses, or wrongs done or committed by virtue or under color of authority derived from this act . . . such defendant shall have the right to remove such cases for trial to the proper district or circuit court

SENATOR LYMAN TRUMBULL (Republican, Illinois)

...
Mr. President, I regard the bill to which the attention of the Senate is now called as the most important measure that has been under its consideration since the adoption of the constitutional amendment abolishing slavery. That amendment declared that all persons in the United States should be free. This measure is intended to give effect to that declaration and secure to all persons within the United States practical freedom. There is very little importance in the general declaration of abstract truths and principles unless they can be carried into effect, unless the persons who are to be affected by them have some means of availing themselves of their benefits. Of what avail was the immortal declaration "that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life liberty, and the pursuit of happiness," and "that to secure these rights Governments are instituted among men," to the millions of the African race in this country who were ground down and degraded and subjected to a slavery more intolerable and cruel than the world ever before knew? . . . And of what avail will it now be that the Constitution of the United States has declared that slavery shall not exist, if in the late slaveholding States laws are to be enacted and enforced depriving persons of African descent of privileges which are essential to freemen?

It is the intention of this bill to secure those rights. . . .

... Since the abolition of slavery, the Legislatures which have assembled in the insurrectionary States have passed laws relating to the freemen, and in nearly all the States they have discriminated against them. They deny them certain rights, subject them to severe penalties, and still impose upon them the very restrictions which were imposed upon them in consequence of the existence of slavery, and before it was abolished. The purpose of the bill under consideration is to destroy all these discriminations, and to carry into effect the constitutional amendment. . . .

... [T]he question will arise, has Congress authority to pass such a bill? Has Congress authority to give practical effect to the great declaration that slavery shall not exist in the United States? If it has not, then nothing has been accomplished by the adoption of the constitutional amendment. . . .

...
... I take it that any statute which is not equal to all, and which deprives any citizen of civil rights which are secured to other citizens, is an unjust encroachment upon his liberty; and is, in fact, a badge of servitude which, by the Constitution, is prohibited. . . .

...
... In my judgment, persons of African descent, born in the United States, are as much citizens as white persons who are born in the country. I know that in the slaveholding States a different opinion has obtained. The people of those States have not regarded the colored race as citizens, and on that principle many of their laws making discriminations between the whites and the colored people are based; but it is competent for Congress to declare, under the Constitution of the United States, who are citizens. If there were any question about it, it would be settled by the passage of a law declaring all persons born in the United States to be citizens thereof. That this bill proposes to do. Then they will be entitled to the rights of citizens. And what are they? The great fundamental rights set forth in this bill; the right to acquire

property, the right to go and come at pleasure, the right to enforce rights in the courts, to make contracts, to inherit and dispose of property. These are the very rights that are set forth as appertaining to every freeman.

SENATOR PETER VAN WINKLE (Republican, West Virginia)

If the gentleman will permit me, before he passes from this subject I should like him to explain, if these Africans are not now citizens of the United States, where is the authority by law of Congress to make them citizens?

SENATOR TRUMBULL

The Constitution of the United States confers upon Congress the right to provide uniform rules of naturalization.

...
[U]nder the constitutional amendment which we have now adopted, and which declares that slavery shall no longer exist, and which authorizes Congress by appropriate legislation to carry this provision into effect, I hold that we have a right to pass any law which, in our judgment, is deemed appropriate, and which will accomplish the end in view, secure freedom to all people in the United States. The various State laws to which I have referred—and there are many others—although they do not make a man an absolute slave, yet deprive him of the rights of a freeman; and it is perhaps difficult to draw the precise line, to say where freedom ceases and slavery begins, but a law that does not allow a colored person to go from one county to another is certainly a law in derogation of the rights of a freeman. A law that does not allow a colored person to hold property, does not allow him to teach, does not allow him to preach, is certainly a law in violation of the rights of a freeman, and being so may properly be declared void.

...
The first section of the bill defines what I understand to be civil rights: the right to make and enforce contracts, to sue and be sued, and to give evidence, to inherit, purchase, sell, lease, hold, and convey real and personal property, and to full and equal benefit to all laws and proceedings for the security of person and property. These I understand to be civil rights, fundamental rights belonging to every man as a free man, and which under the Constitution as it now exists we have a right to protect every man in.

...
This bill has nothing to do with the political rights or *status* of parties. It is confined exclusively to their civil rights, such rights as should appertain to every free man.

REPRESENTATIVE JOHN BINGHAM (Republican, Ohio)

...
... The Constitution does not delegate to the United States the power to punish offenses against the life, liberty or property of the citizen in the States, nor does it prohibit that power to the States, to be by them exercised. The prohibitions of power by the Constitution to the States are express prohibitions, as that no State shall enter into any treaty, &c., or emit bills of credit, or pass any bill of attainder, &c. The Constitution does not prohibit States from the enactment of laws for the general government of the people within their respective limits.

...
I find no fault with the introductory clause, which is simply declaratory of what is written in the Constitution, that every human being born within the jurisdiction of the United States of parents not owing allegiance to any foreign sovereignty is, in the language of your Constitution itself, a natural born citizen; but, sir, I may be allowed to say further, that I deny that the Congress of the United States ever

had the power or color of power to say that any man born within the jurisdiction of the United States, not owing a foreign allegiance, is not and shall not be a citizen of the United States. Citizenship is his birthright, and neither the Congress nor the States can justly or lawfully take it from him. But while this is admitted, can you declare by congressional enactment as to citizens of the United States within the States that there shall be no discrimination among them of civil rights?

... [T]he term civil rights includes every right that pertains to the citizen under the Constitution, laws, and Government of this country. The term "citizen" has had a definite meaning among publicists ever since the days of Aristotle. He interpreted and rendered that term to signify a person who was a partner in the government of the country. Under the Constitution of the United States every natural born citizen of the Republic is, in some sense, a partner in the Government, although he may take no active part in it. A distinction is taken, I know very well, in modern times, between civil and political rights. I submit with all respect that the term "political rights" is only a limitation of the term "civil rights," and by general acceptation signifies that class of civil rights all embraced in the term "civil rights," and must it not of necessity be so interpreted? ...

If civil rights has this extent, what, then, is proposed by the provision of the first section? Simply to strike down by congressional enactment every State constitution which makes a discrimination on account of race or color in any of the civil rights of the citizen. I might say here, without the least fear of contradiction, that there is scarcely a State in this Union which does not, by its constitution or by its statute laws, make some discrimination on account of race or color between citizens of the United States.

... The law in every State should be just; it should be no respecter of persons. It is otherwise now, and it has been otherwise for many years in many of the States of the Union. I should remedy that not by an arbitrary assumption of power, but by amending the Constitution of the United States, expressly prohibiting the States from any such abuse of power in the future.

... [T]he care of the property, the liberty, and the life of the citizen, under the solemn sanction of an oath imposed by your Federal Constitution, is in the States, and not in the Federal Government. I have sought to effect no change in that respect in the Constitution of the country. I have advocated here an amendment which would arm Congress with the power to compel obedience to the oath, and punish all violations by State officers of the bill of rights, but leaving those officers to discharge the duties enjoined upon them as citizens of the United States by that oath and by the Constitution. Standing upon this position, I may borrow the words of the most distinguished man [Alexis de Toqueville] who was ever sent hither from the Old World to make a personal observation of the workings of our institutions, as truly descriptive of the American system: "centralized government, decentralized administration." That, sir, coupled with your declared purpose of equal justice, is the secret of your strength and power.

I hold, sir, that our Constitution never conferred upon the Congress of the United States the power—sacred as life is, first as it is before all other rights which pertain to man on this side of the grave—to protect it in time of peace by the terrors of the penal code within organized States; and Congress has never attempted to do it. There never was a law upon the United States statute book to punish the murderer for taking away in time of peace the life of the noblest, and the most unoffending as well, of your citizens, within the limits of any State of the Union. The protection of the citizen in that respect was left to the respective States, and there the power is today. What you cannot do by direction you cannot do by indirection.

... Sir, I have always so learned our dual system of Government by which our own American nationality and liberty have been established and maintained. I have always believed that the protection in time of peace within the States of all the rights of person and citizen was of the powers reserved to the States. And so I still believe.

Now, what does this bill propose? To reform the whole civil and criminal code of every State government by declaring that there shall be no discrimination between citizens or account of race or color in civil rights or in the penalties prescribed by their laws. I humbly bow before the majesty of justice, as I

bow before the majesty of that God whose attribute it is, and therefore declare that there should be no such inequality or discrimination even in the penalties for crime; but what power have you to correct it? That is the question.

SENATOR CHARLES SUMNER (Republican, Massachusetts)

... You have already in this Chamber, only last Friday, decreed civil rights without distinction of color. Who can doubt that by the same title you may decree political rights, also, without distinction of color? But, having the power, it is your duty to exercise it. You cannot evade this duty without becoming partakers in wrong. And this brings me to the second practical consequence that must ensue from the adoption of this proposition. You hand over wards and allies, through whom the Republic has been saved, and therefore our saviors, to the control of vindictive enemies, to be taxed and governed without their own consent;

[Sumner then proposed the following supplement to the Civil Rights Act of 1866]

And whereas, further, it is provided in a recent Constitutional Amendment, that Congress may "enforce" the prohibition of Slavery by "appropriate legislation," and it is important to this end that all relics of Slavery should be removed, including all distinction of rights on account of color:

...
Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in all States lately declared to be in rebellion there shall be no oligarchy, aristocracy, caste, or monopoly invested with peculiar privileges or powers, and there shall be no denial of rights, civil or political, on account of race or color; but all persons shall be equal before the law, whether in the court-room or at the ballot-box. . . .

The freedman must be protected. To this you are solemnly pledged by the Proclamation of President Lincoln, which, after declaring him "free," promises to *maintain* this freedom, not for any limited period, but for all time. But this cannot be, so long as you deny him the shield of *impartial laws*. Let him be heard in court, and let him vote. Let these rights be guarded sacredly. Beyond even the shield of *impartial laws*, he will then have the protection which comes from the consciousness of manhood. . . .

... I insist that it is a bounden duty to see that such State has a "republican form of government," and, in the discharge of this bounden duty, we must declare that a State, which, in the foundation of its government, sets aside "the consent of the governed," which imposes taxation without representation, which discards the principle of Equal Rights, and lodges power exclusively with an Oligarchy, Aristocracy, Caste, or Monopoly, cannot be recognized as a "republican form of government," according to the requirement of American institutions.

... Our fathers could not bear a Stamp Act in the making of which they had no voice, and they braved terrible war with the most formidable power of the globe rather than pay a tax of threepence on tea imposed by a Parliament in which they were unrepresented. Are you ready, Sir, in disregard of this great precedent, and in disregard of all promises and examples of past history, to thrust a single citizen out of all representation in the Government, while you consume his substance with taxation, subject him to Stamp Acts, compel him to pay a duty of twenty-five cents a pound on tea, and then follow him with imposts in all the business of life? Clearly, if you do not recognize his title to representation, you must at least by careful legislation relieve him from this intolerable taxation. Some of the millions you thrust out already contribute largely to the public revenue. How, then, can you deny them representation? Their money is not rejected. Why reject their votes? But if you reject their votes, you cannot take their money. As you detect no color in their money, you ought to detect no color in their votes.

In this denial of the right to vote there is a surpassing tyranny, being nothing less than a confiscation of the highest property the citizen can possess. To take his money is robbery; to appropriate his house or land is spoliation; but house and land are less than the right by which the citizen is assured in all other rights . . .

. . . Whatever legislation seems “appropriate” to “enforce” the abolition of Slavery, whatever means seem proper to this end, must be within the powers of Congress under the Constitutional Amendment. You cannot deny this principle without setting aside those most remarkable judgments which stand as landmarks of constitutional history. But who can doubt that the abolition of the whole Black Code, in all its oligarchical pretensions, civil and political, is “appropriate” to “enforce” the abolition of Slavery? Mark the language of the grant. Congress may “enforce” abolition, and nobody can question the “means” it thinks best to employ. Let it not hesitate to adopt the “means” that promise to be most effective. As the occasion is extraordinary, so the “means” employed must be extraordinary.

But the Senate has already by solemn vote affirmed this very jurisdiction. You have, Sir, decreed that blacks shall enjoy the same civil rights as whites,—in other words, that with regard to civil rights there shall be no oligarchy, aristocracy, caste, or monopoly, but that all shall be equal before the law, without distinction of color. And this great decree you have made, as “appropriate legislation” under the Constitutional Amendment, to “enforce” the abolition of Slavery. Surely you have not erred. Beyond all question, the protection of the colored race in civil rights is essential to complete the abolition of Slavery; but the protection of the colored race in political rights is not less essential, and the power is as ample in one case as in the other. In each you legislate for the maintenance of that Liberty so tardily accorded, and the legislation is just as “appropriate” in one case as in the other. Protection in civil rights by Act of Congress will be a great event. It will be great in itself. It will be greater still, because it establishes the power of Congress, without further amendment of the National Constitution, to protect every citizen in all his rights, including of course the elective franchise. . . .

The ballot is *peacemaker*. . . . Deny it, and the freedman will be the victim of perpetual warfare. Ceasing to be a slave, he only becomes a sacrifice. Grant it, and he is admitted to those equal rights which allow no sacrifice. . . . The master will recognize the new citizen. The slave will stand with tranquil self-respect in presence of the master. Brute force disappears. Distrust is at an end. The master is no longer tyrant. The freedman is no longer dependent. . . .

The ballot is *reconciler*. Next after peace is reconciliation. But reconciliation is more than peace. It is concord. Parties long estranged are brought into harmony. They learn to live together. . . .

The ballot is *schoolmaster*. Reading and writing are of inestimable value, but the ballot teaches what these cannot teach. It teaches manhood. Especially is it important to a race whose manhood has been denied. The work of redemption cannot be complete, if the ballot is left in doubt. The freedman already knows his friend by the unerring instinct of the heart. Give him the ballot, and he will be educated into the principles of government. Deny him the ballot, and he will continue alien in knowledge as in rights. . . .

The ballot is *protector*. Perhaps, at the present moment, this is its highest function. Slavery has ceased in name; but this is all. The old master still asserts an inhuman power, and now by positive statutes seeks to bind his victim in new chains. . . . To save the freedman from this tyranny, with all its accumulated outrage, is a solemn duty. For this we are now devising guaranties; but, believe me, the only sufficient guaranty is the ballot. Let the freedman vote, and he will have in himself under the law a constant, ever-present, self-protecting power. The armor of citizenship will be his best security. The ballot will be to him sword and buckler,—sword with which to pierce his enemies, and buckler on which to receive their assault. Its possession will be a terror and a defense. The law, which is the highest reason, boasts that every man’s house is his castle; but the freedman can have no castle without the ballot. When the master knows that he may be voted down, he will know that he must be just, and everything is contained in justice. . . . To him who has the ballot all other things shall be given,—protection, opportunity, education, a homestead. . . .

Strike at the Black Code, as you have already struck at the Slave Code. There is little to choose between them. Strike at once; strike hard. You have already proclaimed Emancipation; proclaim

Enfranchisement also. No longer stultify yourselves by setting at nought the practical principle of the Fathers, that all just government stands only on the consent of the governed, and its inseparable corollary, that *taxation without representation is tyranny*. What was once true is true forever, although we may for a time lose sight of it; and this is the case with those imperishable truths to which you have been, alas! so indifferent. Thus far the work is only *half done*. See that it is finished. . . . Not only is the freedman compelled to pay, he must fight also, and he must obey the laws,—three things he cannot escape. But, according to the primal principle of republican government, he has an indefeasible right to a voice in determining how to be taxed, when to fight, and what laws to obey,—all of which can be secured only through the ballot. Thus again do I bring you to the same conclusion, confronting us at every point and at every stage, as a commandment not to be disobeyed.

SENATOR TRUMBULL

...
But, sir, the granting of civil rights does not, and never did in this country, carry with it rights, or, more properly speaking, political privileges. A man may be a citizen in this country without a right to vote or without a right to hold office. The right to vote and hold office in the States depends upon the legislation of the various States; the right to hold certain offices under the Federal Government depends upon the Constitution of the United States. . . . Women are citizens; children are citizens; but they do not exercise the elective franchise by virtue of their citizenship. Foreigners . . . before they are naturalized are protected in the rights enumerated in this bill, but because they possess those rights in most, if not all the States, that carries with it no right to vote.

But, sir, what rights do citizens of the United States have? To be a citizen of the United States carries with it some rights; and what are they? They are those inherent, fundamental rights which belong to free citizens or free men in all countries, such as the rights enumerated in this bill, and they belong to them in all the States of the Union. The right of American citizenship means something. It does not mean, in the case of a foreigner, that when he is naturalized he is to be left entirely to the mercy of State legislation. He has a right when duly naturalized to go into any State of the Union and to reside there, and the United States Government will protect him in that right. It will protect a citizen of the United States, not only in one of the States of the Union, but it will protect him in foreign lands. . . .

What are they? "The right of personal security, the right of personal liberty, and the right to acquire and enjoy property;" and these are declared to be inalienable rights, belonging to every citizen of the United States, as such, no matter where he may be.

...
Can human ingenuity point out where [section 2] discriminates in favor of colored persons? It says, in effect, that no one shall subject a colored person to a different punishment than that inflicted on a white person for the same offense. Does that discriminate in favor of the colored person? Why sir, the very object and effect of the section is to prevent discrimination, and language, it seems to me, could not more plainly express that object and effect. It may be that it is for the benefit of the black man because he is now in some instances discriminated against by State laws; but that is the case with all remedial statutes. They are for the relief of the persons who need the relief, not for the relief of those who have the right already; and when those needing the relief obtain it they stand upon the precise footing of those who do not need the benefit of the law.

...
If it be necessary in order to protect the freedman in his rights that he should have authority to go into Federal courts in all cases where a custom prevails in a State, or when there is a statute-law of a State discriminating against him, I think we have the authority to confer that jurisdiction under the second clause of the constitutional amendment, which authorizes Congress to enforce by appropriate legislation the article declaring that "neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or in any place subject to their jurisdiction." That clause authorizes us to do whatever is necessary to protect the

freedman in his liberty. The faith of the nation is bound to do that; and if it cannot be done without, would have authority to allow him to come to the Federal courts in all cases.

...
The bill neither confers nor abridges the rights of any one, but simply declares that in civil rights there shall be an equality among all classes of citizens, and that all alike shall be subject to the same punishment. Each State, so that that it does not abridge the great fundamental rights belonging, under the Constitution, to all citizens, may grant or withhold such civil rights as it pleases; all that is required is that, in this respect, its laws shall be impartial.

...
... That the second clause of the [Thirteenth] amendment gives this power there can be no question. Some have contended that it gives the power even to confer the right of suffrage. I have not thought so, because I have never thought suffrage any more necessary to the liberty of a freedman than of a non-voting white, whether child or female. But his liberty under the Constitution he is entitled to, and whatever is necessary to secure it to him he is entitled to have, be it the ballot or the bayonet. If the bill now before us, and which goes no further than to secure civil rights to the freedman, cannot be passed, then the constitutional amendment proclaiming freedom to all the inhabitants of the land is a cheat and a delusion.

SENATOR EDGAR COWAN (Republican, Pennsylvania)

...
... I say that this bill, according to its grammatical construction, and according to the construction that any judge... can readily put upon it, confers upon married women, upon minors, upon idiots, upon lunatics, and upon everybody native born in all the States, the right to make and enforce contracts, because there is no qualification in the bill, and the very object of the bill is to override the qualifications that are upon those rights in the States, and to punish the judges of the several States for executing them. There is no qualification as to the kind of contracts. The power given to those people by this bill is unlimited as to persons, and it is equally unlimited as to contracts. I need not remind you, sir, that there are a large number of contracts which are not allowed in the several States, some on account of policy, some on account of morality, and others upon account of positive injunction to the contrary. A contract in my State made upon the Sabbath day is void; but under this bill that contract could be enforced. A contract made against chastity, ... is void; but under this bill that might be enforced.

...
Mr. President, the subjects-matter of the first section of this bill never have been within the jurisdiction or control of the United States Government. When did an inhabitant of a State or Territory, in a controversy between himself and one of his neighbors, look to the United States Government to settle that controversy? When did he look to the United States Government for any of those rights which are usually protected by Governments? Never. The inhabitant of a State settles his disputes with his neighbor by a reference to the State courts. They are the tribunals to decide those questions. ...

...
... Where do we get the power to pass this bill? From what clause of the Constitution is it extracted? Where is it? Has anybody satisfied this Senator, or that one, or all of them, that there is such a power in the Constitution?

What is the fair construction of that amendment of the Constitution abolishing slavery? ... The true meaning and intent of that amendment was simply to abolish negro slavery. That was the whole of it. What did it give to the negro? It abolished his slavery. Wherein did his slavery consist? It consisted in the restraint that another man had over his liberty, and the right that that other had to take the proceeds of his labor. This amendment deprived the master of that right, and conferred upon the negro. What more did it do? Nothing, by the terms of it, and nobody can construe its terms to extend it beyond that. It gave to the negro that which is described in the elementary books as the right of personal liberty. What is that right of personal liberty? The right to go wherever one pleases without restraint or hindrance on the part of any other person.

That is followed by a subsequent clause, in which, it is stated that Congress shall have a right to enforce this provision by “appropriate legislation.” What is the appropriate legislation? The appropriate legislation is that legislation which allows a personal liberty to the negro and prevents anybody from restraining him in that liberty. . . .

. . . I suppose it will not be pretended by any lawyer in the world that the subject-matter of that amendment extended to anybody but slaves. We have seen that it did not extend to minors, it did not extend to apprentices, it did not extend to married women. We know that it did not extend to anybody who before that time was free. Did anybody ever suppose that it had any operation whatever upon the *status* of the free negro, a negro who was born free or who had been emancipated ten years before it was passed? Certainly not. Nobody ever dreamed of such a thing. Its operation was wholly confided to the slave; it made the slave free; it did not affect anybody else except the master by depriving him of his slave.

Now what does this bill do? This bill, pretending to be based upon the amendment of the Constitution, whose subject-matter was slaves, and which cannot be extended beyond that, proposes to legislate for very large number of persons who were not slaves, and who were not within its purview or its operation. I mean this bill purports to give power to Congress to legislate in regard to free negroes and mulattoes. To my mind that is as clear and conclusive an objection to it upon the score of constitutionality as ever was made to a bill in the world. However constitutional it might be with regard to the emancipated slave, clearly it is as unconstitutional to all other people not embraced within that amendment.

SENATOR WILLIAM STEWART (Republican, Nevada)

. . . Although I am a strong advocate for local government, and extremely anxious that these matters should be attended to by the States as early as practicable, still I believe that it was the intention of those who amended the Constitution, as plainly indicated by that amendment, to give the power to the General Government to pass any necessary law to secure to the freedmen personal liberty. . . .

SENATOR B. GRATZ BROWN (Republican, Missouri)

. . . [W]hen that bill came from the House of Representatives at the last Congress, and was pressed upon us here, containing as it did a feature in it which excluded the negroes in the southern States from suffrage, I, for one, announced myself as utterly opposed to the bill. I furthermore stated on the floor of the Senate publicly that I never would vote for that bill; or for any other bill reconstructing those States, that did not guaranty to that class of citizens, the loyal colored population of the South, a right of suffrage. I desire to reiterate that statement today, sir, and to say that by no possibility and at no time and under no circumstances will I cast any vote for restoring those States to their original *status* in the Union and admitting back here their Senators to participate in our legislation until suffrage shall have been granted to that class of people. I believe no other reconstruction will ever give peace to the South, security to the North, or permanent and contested union to both sections, to all classes and to every race. .

SENATOR WILLARD SAULSBURY (Democrat, Delaware)

Mr. President, it is not my intention to detain the Senate; argument is useless, reason is thrown away. I prefer to discuss this question hereafter before another tribunal. But, sir, I rise to say that in my judgment the passage of this bill is the inauguration of revolution—bloodless, as yet, but the attempt to execute it by the machinery and in the mode provide in the bill will lead to revolution in blood. . . .

Mr. President, do you suppose, does this Senate suppose, is there a sane man within the limits of this whole country who supposes, that if an honest judiciary of a State shall decide that a free negro shall

not testify in the courts of that State, when his right to testify is prohibited by the statute law of the State, the people of such State will allow the agents of your commissioners to arrest those judges and drag them from the bench? Do you suppose that if the Legislature of a State enacts a law discriminating between the white and the black races, the people of any State of this Union are going to allow their Legislatures to be dragged from their legislative halls by your free negro agents sent by free negro commissioners, because you have got the power under this bill to appoint free negro commissioners and they have their power to send free negro agents to execute their commands? Do you suppose the people of any State are going to allow such an outrage as that? No sir. They would sooner see every foot of their soil drenched in blood than submit to any such outrage. . . .



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