

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 7: The Republican Era – Equality/Race/The Abandonment of Reconstruction

The Lodge Federal Elections Bill (1890) (expanded)¹

The Lodge Federal Elections Bill was the last effort that the Republican Party made in the late nineteenth century to reconstruct southern politics. Republicans in 1888 ran on a platform committed to restoring democracy in the South. The first substantive paragraph of that platform declared,

We hold the free and honest popular ballot and the just and equal representation of all the people to be the foundation of our Republican government and demand effective legislation to secure the integrity and purity of elections, which are the fountains of all public authority. We charge that the present Administration and the Democratic majority in Congress owe their existence to the suppression of the ballot by a criminal nullification of the Constitution and laws of the United States.

The resulting campaign was successful. Republicans regained control of the White House and both houses of Congress. Newly elected president Benjamin Harrison called on Republicans in Congress to fulfill their commitment to African-American voting rights. Representative Henry Cabot Lodge crafted a federal elections bill that required federal supervision of federal elections in any district where a sufficient number of citizens petitioned for supervision. Those supervisors had the power to oversee the voter registration process, voting, and vote counting to ensure that the election process was fair and respected federal law. Republicans had two reasons for promoting this bill. Most obviously, the party was committed to granting all qualified persons the right to vote. Moreover, most, but not all, Republicans believed that the Republican Party would be competitive in the South only if persons of color could vote freely.

The Lodge Federal Elections bill failed to pass. The measure was repeatedly stalled while Congress considered other matters. In the late 1890s a coalition of Democrats and conservative Republicans finally killed the bill.

When reading these debates, consider the following questions. Was the Lodge Elections bill the last gasp of Reconstruction or were Republican concerns in the 1890s different than the 1870s? Was the opposition to the Lodge bill based on the same or different principles than opposition to Reconstruction measures? Could any elections bill have passed Congress by 1890? If not, why were Republicans able to campaign on promises to restore voting rights in the South but not able to restore voting rights in the South?

Benjamin Harrison, "Inaugural Address"

....

It is very gratifying to observe the general interest now being manifested in the reform of our election laws. Those who have been for years calling attention to the pressing necessity of throwing about the ballot box and about the elector further safeguards, in order that our elections might not only be free and pure, but might clearly appear to be so, will welcome the accession of any who did not so soon discover the need of reform. The National Congress has not as yet taken control of elections in that case over which the Constitution gives it jurisdiction, but has accepted and adopted the election laws of the

¹ *Congressional Record*, House, 51st Cong., 1st Sess. (1890), 6538–67.

several States, provided penalties for their violation and a method of supervision. Only the inefficiency of the State laws or an unfair partisan administration of them could suggest a departure from this policy.

It was clearly, however, in the contemplation of the framers of the Constitution that such an exigency might arise, and provision was wisely made for it. The freedom of the ballot is a condition of our national life, and no power vested in Congress or in the Executive to secure or perpetuate it should remain unused upon occasion. The people of all the Congressional districts have an equal interest that the election in each shall truly express the views and wishes of a majority of the qualified electors residing within it. The results of such elections are not local, and the insistence of electors residing in other districts that they shall be pure and free does not savor at all of impertinence.

If in any of the States the public security is thought to be threatened by ignorance among the electors, the obvious remedy is education. The sympathy and help of our people will not be withheld from any community struggling with special embarrassments or difficulties connected with the suffrage if the remedies proposed proceed upon lawful lines and are promoted by just and honorable methods. How shall those who practice election frauds recover that respect for the sanctity of the ballot which is the first condition and obligation of good citizenship? The man who has come to regard the ballot box as a juggler's hat has renounced his allegiance.

...

Benjamin Harrison, "First Annual Message"

The colored people did not intrude themselves upon us. They were brought here in chains and held in the communities where they are now chiefly found by a cruel slave code. Happily for both races, they are now free. They have from a standpoint of ignorance and poverty—which was our shame, not theirs—made remarkable advances in education and in the acquisition of property. They have as a people shown themselves to be friendly and faithful toward the white race under temptations of tremendous strength. They have their representatives in the national cemeteries, where a grateful Government has gathered the ashes of those who died in its defense. They have furnished to our Regular Army regiments that have won high praise from their commanding officers for courage and soldierly qualities and for fidelity to the enlistment oath. In civil life they are now the toilers of their communities, making their full contribution to the widening streams of prosperity which these communities are receiving. Their sudden withdrawal would stop production and bring disorder into the household as well as the shop. Generally they do not desire to quit their homes, and their employers resent the interference of the emigration agents who seek to stimulate such a desire.

But notwithstanding all this, in many parts of our country where the colored population is large the people of that race are by various devices deprived of any effective exercise of their political rights and of many of their civil rights. The wrong does not expend itself upon those whose votes are suppressed. Every constituency in the Union is wronged.

It has been the hope of every patriot that a sense of justice and of respect for the law would work a gradual cure of these flagrant evils. Surely no one supposes that the present can be accepted as a permanent condition. If it is said that these communities must work out this problem for themselves, we have a right to ask whether they are at work upon it. Do they suggest any solution? When and under what conditions is the black man to have a free ballot? When is he in fact to have those full civil rights which have so long been his in law? When is that equality of influence which our form of government was intended to secure to the electors to be restored? This generation should courageously face these grave questions, and not leave them as a heritage of woe to the next. The consultation should proceed with candor, calmness, and great patience, upon the lines of justice and humanity, not of prejudice and cruelty. No question in our country can be at rest except upon the firm base of justice and of the law.

I earnestly invoke the attention of Congress to the consideration of such measures within its well-defined constitutional powers as will secure to all our people a free exercise of the right of suffrage and every other civil right under the Constitution and laws of the United States. No evil, however deplorable, can justify the assumption either on the part of the Executive or of Congress of powers not granted, but both will be highly blamable if all the powers granted are not wisely but firmly used to correct these evils.

The power to take the whole direction and control of the election of members of the House of Representatives is clearly given to the General Government. A partial and qualified supervision of these elections is now provided for by law, and in my opinion this law may be so strengthened and extended as to secure on the whole better results than can be attained by a law taking all the processes of such election into Federal control. The colored man should be protected in all of his relations to the Federal Government, whether as litigant, juror, or witness in our courts, as an elector for members of Congress, or as a peaceful traveler upon our interstate railways.

REPRESENTATIVE HENRY CABOT LODGE (Republican, Massachusetts)

...
The bill before us proposes to extend and perfect existing laws in regard to the supervision of the elections of members of this body, so that they will be effective throughout the United States, wherever the applications of the law is demanded. It is needless for me to say to the House that the power of the United States in regard to elections extends only to those at which members of this body are chosen. This bill proposes to exercise this power, when demanded, in such a way as to secure, as far as possible, fair and honest elections for Representatives in Congress, without disturbing or overthrowing in any way the State machinery employed for the same purpose.

The bill provides that a chief supervisor shall be appointed by the circuit courts in each judicial circuit of the United States, that on petition of 100 citizens in an entire Congressional district, or in a city of over 20,000 inhabitants, or on the petition of 50 citizens in a county, such city, Congressional district, or county shall be put under the operation of this law.

The first duty of the officers appointed under this bill is that of observation and report, first on registration where registration exists, in order that such registration may be pure; that no man's name may be upon it which does not belong there, and that no man's name may be taken from it which has a right to be there. Their next duty is to stand at the polls and watch the reception of the vote. Their next duty is to take part in the count of the votes and make a return to the chief supervisor. If the law applies only to a city or a county, their duty stops there. If, however, it applies to an entire Congressional district, the law provides for the establishment of a United States board of canvassers, also to be appointed by the circuit courts, who shall canvass and return the votes as returned to them by the supervisors, and make certificates of the same to the Clerk of this House. If that certificate agrees with the certificate of the State officers, of course the man holding both certificates is seated. If, however, they differ—and this is the only point where the law gives absolute control to the United States—the certificate of the United States board of canvassers is to be *prima facie* evidence, and is to place the name of the holder upon the roll of the Representatives of this body.

...
The great safeguard to the public welfare of this country is publicity. Public opinion always governs in the last resort, and that it should govern rightly it needs only to be correctly informed. Everything which concerns government, from the selection of the pettiest town officer to the conduct of the vast affairs of the nation, should be done so that it may be seen and known by all men. Darkness is noxious to free institutions, but in the bright light that can shine upon them they flourish and grow strong.

... The greatest assurance of honest elections lies in making absolutely public every step and every act by which the Representatives of the people are chosen to their high offices. To secure complete publicity at every stage of an election, therefore, is the leading principle of this bill. From the earliest process by which citizens are made to the very last by which Representatives are certified, every step under this bill is to be watched over and reported by officers of the United States, every transaction, no matter how trivial, if it has relation to elections and to voting, is to be brought out into light so that the people of the United States may behold and understand it. If all is well and rightly done, it will be known. If aught is wrong, it too will be known, and wrong withers away when it is dragged out into the bright light of day.

...

The first principle in the bill, therefore, is to secure this absolute publicity in regard to everything connected with the election of a member of Congress. The second is to make sure that every man who is entitled to vote has an opportunity to cast his vote freely and have it counted, and that no man who is not entitled to vote shall be allowed to vote. To the qualified voter this bill aims to give full opportunity. If he is threatened it seeks to protect him; if he is ignorant it seeks to inform him. On the other hand, in order to prevent the man who is trying to vote in violation of the law or the officer who is fraudulent and corrupt from carrying out his wrongdoing, this bill offers the means of speedy punishment and of collecting the evidence necessary to conviction.

...

Such being the principles and purposes of the bill, two questions arise in regard to it: First, is it within the power of Congress to enact such a law; and second, if Congress has the power, is it necessary and expedient to exercise it? So to the first point, the constitutional power to enact such legislation, there is not, I think, much room for discussion. The language of the Constitution is so plain that it admits of but one interpretation, and if doubt ever could have existed, the decisions of the Supreme Court make doubt no longer position.

The necessary power is found in section 4, article I, of the Constitution, which is as follows:

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 times by law make or alter such regulations, except as to the places of choosing Senators.

The language employed in this section is so plain that it would seem almost superfluous to enter into argument or discussion as to its meaning. If words mean anything those just quoted mean that the power of Congress over the conduct of elections of members of that body is absolute and complete. The Constitution says that Congress may make all regulations in regard to the election of Representatives, and the power to "make regulations" thus conferred is in terms exclusive and paramount.

But out of abundance of caution the framers of the Constitution went further and added to the word "make" the words "to alter"; that is, under the Constitution, Congress has the power to assume complete control of elections of its members and conduct them at such times and places and through such officers and under such rules as it may see fit. On the other hand, Congress may under this clause leave the entire regulation of the election of Representatives to the States, or it may take a partial control of a part of the necessary procedure and leave what remains to the State, or it may alter and amend the State regulations and supervise and enforce their execution.

...

In view of the language of the Constitution, of its intentions as explained by its framers, and of the full and elaborate decisions of the Supreme Court on every point which could be involved therein, there can be no need for your committee to offer further argument as to the constitutional powers of Congress to pass such a bill as that which they report herewith. This bill is only a partial exercise of the plenary power of Congress in regard to the election of Representatives. It provides merely that the United States shall watch over every stage of an election which concerns the choice of a member of this body, shall give to all those proceedings the utmost publicity, which in this country is the surest safeguard of the rights of the people, and shall by a single act of control, if necessary, prevent the false certificate, of a member by any State officer or officers who may be ready to violate the laws.

Mr. Speaker, I will not enter further into the constitutional question, for it seems to me to be wholly needless. It is safe to say that no clause in the Constitution is more plainly expressed than that which relates to the control by Congress of Congressional elections, and that none has ever been more decisively construed by the great tribunal upon whom the high duty of finally interpreting the Constitution devolves. Congress has the absolute power to deal with the election of members of this House as it pleases; and the fact that it has never used this or any other power sparingly makes no difference in the argument. Power implies responsibility, and where responsibility exists it can not be

shirked by leaving in abeyance the exercise of the power designed to meet it. If citizens of the United States entitled to vote for Representatives in Congress are deprived of their rights, it is the duty of Congress to see that they are protected. If Congressional elections anywhere are tainted with fraud or corruption, or are perverted by violence, it is the duty of Congress to interfere, and that duty is imperative, because the power of interference exists. If the people, or any considerable body of people, believe that Congressional elections anywhere are fraudulent or corrupt, it is the duty of Congress to interfere in order to restore public confidence.

It is not enough that elections should be fair; they must also be known to be fair. They must be known to be fair beyond the reach of doubt or questioning. It is as important to have public confidence in the verdict of the ballot box as it is to have the verdict itself honest. If people come to believe that the result of elections is not in reality the will of the majority, the day is not far distant when that result will be set aside by force and the very foundations of the Government will be shaken. If popular distrust is not well founded Congress must demonstrate that elections are fair. If fraud and violence really exist they must really be rooted out. Congress therefore has the power, and with the power the duty, to legislate; and the method in which it proposes to deal with the question, under this bill, is before the House. . . .

...
In regard to Southern elections, Mr. Speaker, one of two things must be true—the elections are either fair, free, and honest, or they are not. There can be, unfortunately, no question of the widespread belief among a large body of the American people that many of these elections are the very reverse of fair, free, and honest. Whichever state of facts is the correct one, it is the paramount duty of the National Government to restore to the people confidence in these as in all other elections.

...
... It ought not be necessary to argue that there are districts in the South where the elections for Representatives in Congress are not universally fair and free; but in the problem there presented there is something far graver than a dispute as to the details of voting and counting.

The wrong where wrongdoing occurs in most districts in the North is simply an effort of one party to get ahead of another by illicit means, usually by fraud or bribery of a pretty vulgar kind. No doubt in Southern elections the desire of unscrupulous persons to defeat their opponents by any method plays its part; but the question which complicates and controls the issue there is the question of race. No one can afford to speak lightly of or indulge in recriminations about the race question in the South. I have no desire, for one, to cast stones at any man or any men who are dealing with a problem at their own doors because they do not appear to me to deal with it as I should when I am a thousand miles away from it. That problem and the failure of the negro in America present one of the gravest questions before the American people. It is one in which we are all concerned and for the right solution of which we shall all be held responsible, whether we live in the North or in the South.

...
We owe them no more and no less than we owe to all American citizens, but we do owe them all that the Government gives any American citizen, be he rich or poor, white or black. The Government which made the black man a citizen of the United States is bound to protect him in his rights as a citizen of the United States, and it is a cowardly Government if it does not do it. No people can afford to write anything into their Constitution and not sustain it. A failure to do what is right brings its own punishment to nations as to me. There is no escape from the inexorable law of compensations. . . .

...
[T]he election of men to sit in this Hall is a different question. It is a mere pretense to talk about the “rule of an inferior race,” of “organized barbarism” when dealing with this part of the problem. If negroes or men nominated by negroes had always been elected from a dozen or twenty districts in the South it would have been but a trifling element in the great movement of the National Government.

...
There is another and more important point to be considered here. When Congressional elections are interfered with anywhere, they touch the like elections everywhere. Call this bill “revolutionary!” Mr. Speaker, the “revolution lies in those figures I have read which show that while the Constitution

guarantees an equal representation on this floor that equal representation has ceased to exist. There, Mr. Speaker, is where the "revolution" has been wrought. Whether we can turn it back, whether we can check it, whether we can succeed in undoing its work by legislation here, I do not know; I know that it is our duty to attempt it by every fair and proper means.

... If any State thinks that any class of citizens is unfit to vote through ignorance it can disqualify them from voting for State officers or for members of this House. It has but to put an educational qualification into its constitution. But the disqualification like the qualification can not recognize color, and that is the reason that legal methods have never been tried. The negro is not thrust out from his rights merely because he is ignorant and unfit to use them, as is constantly charged, but because his skin is black. It is this distinction which gives the lie to every principle of American liberty that is at the bottom of the difficulty and of the problem which we all deplore.

The first step, then, toward the settlement of the negro problem and toward the elevation and protection of the race is to take it out of national party politics. This can be done in but one way. The United States must extend to every citizen equal rights. It is a duty which they can not avoid. If they do not perform it now they will perform it later, and the longer it is postponed the worse the consequences will be. Moreover, this cry about the danger of negro rule, this bitter appeal to race supremacy, which is always ringing in our ears, is made a convenient stalking horse to defraud white men as well as black men of their right. It is an evil which must be dealt with, and if we fail to deal with it we shall suffer for our failure. If all is fair and honest and free in Southern elections this law will interfere with no one, but will demonstrate the fact to the people of the United States. If all is not fair and free this law will begin even if it does not complete its cure.

An honest vote lies at the bottom of our system of government. It is the only way we have to discover and assert the will of the majority, and the will of the majority governs in this country. If we do not ascertain that will honestly it will be determined by force. You may call these truisms, if you like, but truisms are more apt to be forgotten than anything else, and yet to disregard them is the road to ruin. Free elections are the safety of this Government. We here can interfere with none but those which concern the Congress itself, but it is our plain duty to see to it that those at least are preserved in their purity and integrity. So far as a party question enters into this it can be easily dealt with. If one party benefits by free elections it is because that party is cheated now. If neither party is cheated by fraud, then free and honest elections will affect neither. If both cheat, both will suffer.

It is our duty, so far as lies in our power, to make elections so honest that no man will dare to question them. Let us do our whole duty to every American citizen, made such by the Constitution, no matter what his creed or color, no matter whether he be weak or strong, rich or poor, and we can safely abide by the result. Let us secure to all men the freedom which is the cornerstone of our Government.

REPRESENTATIVE JOHN J. HEMPHILL (Democrat, South Carolina)

...
The purpose of this bill ... is effectually to place the election of members of Congress under the control of the United States Government, and, as we who represent the minority contend, the effect of the bill, whatever its purpose may be, will be to control absolutely the election not only of members of Congress, but of various State and county officers in the several States of the Union, and eventually to control the election of the President of the United States.

...
I do not propose to enter into any long constitutional argument on this question. I hold that the Supreme Court of the United States must eventually adjudicate all problems which arise as to the powers of the several States and of the United States; and they have gone very far, if they have not absolutely decided that the Congress of the United States has almost unlimited powers in this particular.

I would like to call the attention of the Representatives of the people here to the fact, however, that every expression that has ever fallen from the lips of the voters of this country has been in absolute and utter condemnation of the right of Congress to take from them, the right to decide through State agencies, how these elections shall be carried on and who shall conduct them.

...

This House has been called the very "breath of the people" of the United States, and it is so spoken of because the members are directly elected by them, and the purpose of the creation and the existence of this House was and is that the people through its members might have the most direct and powerful influence upon this Government; and yet this bill provides that the man who is to supervise and practically control the elections of the members of this body shall be one who in no way owes his appointment to the people, but who is appointed by an officer who holds a life tenure and who himself does not receive his commission from the people, but from the President of the United States.

If only one-half is true as to the corruption of the voters of the United States that has been depicted by the gentleman from Massachusetts, then I am sure we may well expect that at least one-half of the supervisors who shall be appointed by the circuit judges will be unworthy to exercise the great powers that are given to such officers in this bill.

If the people of the United States have become so debauched that they can not be trusted to have any voice whatever in choosing the managers of their elections, and are to be "guarded, scrutinized, and supervised," as if they were criminals absent from the penitentiary upon ticket-of-leave only, then I say it is but fair to presume that when we must select these officers from the body of the people we will not be able to get every one of them honest. Suppose a mistake is made in the appointment of these officials and some of them act corruptly and dishonestly. The judge who appoints the supervisor has a life tenure, and the supervisor himself has a life tenure. Neither owes his appointment to the people, and neither can be removed or directly affected in any way by the popular vote. How can they turn the supervisor out if he is dishonest and illegally returns the wrong man to Congress?

...

It must be a humiliating thing for Republicans to confess by this bill that while through seventy-five years, when this country was controlled alternatively by the Federalists, the Democrats, and the Whigs, the people could manage their own elections, that now, after twenty-five years of almost uninterrupted control by the Republican party, the people have become so corrupt, their honor so blunted, their integrity so weakened, that they can not be trusted to make an honest return of the votes they cast and must be guarded and scrutinized and supervised as if they were criminals.

...

The chief reason assigned by the gentleman from Massachusetts for the passage of this measure is that the public at large think that there is corruption at elections. Mr. Speaker, I think that is the most humiliating confession I have ever heard on this floor. He means to say that if the people have an opinion as to the dishonesty of their Government which is not well founded, the Representative should acquiesce in the unjust charge and trim his sails accordingly, instead of squarely meeting the case and giving to the public the truth as he knows it. I think, Mr. Speaker, that it is the duty of a Representative of the people to tell them the unadulterated truth whether it be what they have believed or not, and he ought to stand to it.

...

Gentlemen, a good deal has been said in this country of late about the new South. What this country really needs is a new North. It needs a North that will take a view of all the facts and not be guided by their own preconceived prejudices. It needs a North which will not waste all its time and energy reforming other people's abuses. It needs a North that will sometimes look at its own shortcomings and not always on those of a people a thousand miles away; and it needs a North which will believe that when a man of the South of the Anglo-Saxon race happens by any untoward circumstance to come into serious collision with another man of the African race that it is not always because the other man is black.

...

Now, gentlemen, I believe, and I do not hesitate to say it, that the colored man has his rights in full. He has as many rights as I have, and I concede them all to him, but he can not have his rights and mine, too, and this law is intended to put him again in control of the government of the Southern States. It is intended to awaken again that race prejudice which is fast dying out; it is intended to bring about a

constant irritation and clash between the two races in the South, and will retard its growth and be destructive of the very principles of government in that section.

...

REPRESENTATIVE JONATHAN H. ROWELL (Republican, Illinois)

...

The bill under consideration, Mr. Speaker, is no new departure in legislation. It is but an enlargement of the law which has been upon the statute-book since 1871, and which, for eighteen years, has been constantly called into requisition in all the great centers of population for the benefit of all the people, and always in the interest of honest elections. For eighteen years it has been frequently called into requisition in the rural districts as well North and South, and never to the detriment of any legal voter and always in the interest of light and truth. It is not a revolution in the practices of this country. It is not trenching upon the rights of any of the States reserved to them. It is but an exercise of a power placed in the beginning in the Constitution of the United States, a power that the people in Congress assembled have not hesitated to make use of when honest elections and fair representation demanded that that power be called into use.

...

Mr. Speaker, there is no more vital question confronting the American people than that which concerns honest elections, whether those elections have reference to State or local affairs, or whether they have reference to the House of Representatives of the United States. So long as the people rest secure in the belief that legislators are chose by the free and uncorrupted suffrage of the electors, so long as they are satisfied that laws are enacted and executed by those who have been honestly chosen, just so long will there be respect for the authority of the law and a public sentiment opposed to lawlessness and a standing army of conservators of good government. It is the conviction that all the people have a voice in the selection of legislative and executive officers; the conviction that every man, however high or however low, counts at the ballot-box, that makes this "a Government of the people, by the people, and for the people."

Our fathers when they founded the Government under which we live laid the corner-stone in the doctrine that governments are established among men by the consent of the governed, and in building a new nation out of all the varied forms of government that the world had developed in each citizen a sovereign, with a right to a single-vote and the equal of every other man of the ballot-box; the right to protect himself with his ballot; the right to give his consent to the government under which he lives at the ballot-box, and the right to have defended the purity of the elections where that voice was expressed.

Now I shall not enter into any discussions of the constitutional questions of whether we have a right to enact into law this bill which we are now considering. It is *res adjudicata*. It is a settled question, and to stop to discuss it before this body is to waste the people's time. . . . [I]f crimes against the purity of the ballot-box are general, or general in any particular locality, and the people of the State or the localities are either unable or unwilling to cope with and uproot the evil, then it ought not only to be the duty, but it ought to be the wish of every representative of the people to use whatever power is found in the Federal Constitution to correct the wrong; and I cannot conceive how any man can oppose the proper exercise of that power if he believes that crimes are prevalent and the results of elections uncertain, unless it is his desire that these crimes may continue, and that minorities instead of majorities shall make the laws and control the destinies of the nation.

...

But, Mr. Speaker, I intend to be entirely frank in what I say upon this bill. It is everywhere in Northern circles believed that the black vote of the Southern States is suppressed. It is everywhere believed that the fifteenth amendment to the Constitution of the United States is nullified. Now, if that belief is not true, it is one of the purposes of this bill to develop that fact. It is one of the purposes of this bill to secure everywhere to every man who desires it and is qualified the right to cast his ballot and have it counted; and in using the term "every man" I mean every man without reference to where he lives or what his color may be. It is the pleasure of the American people to incorporate into the Constitution of

the United States the fifteenth amendment, and since that article became a part of our Constitution everywhere, in every State, the black man has been a voter upon the same terms as the white man.

Is it our duty, under the oath which we registered when we took our seats here, to see to it that the Constitution, the whole Constitution, and every section of it shall be upheld? Or did we take that oath with a mental reservation that if we live in a State where there might be colored men making up a majority of the population we would proclaim to the world that “we, the minority, must control, or that either they or we must leave the State, and that, so help us God, we would not leave it?” Is there any other meaning to that declaration, so defiantly made on this floor, than that, although the colored men are registered voters, although they are made voters by the Constitution of the United States, and although they constitute a majority of the voters, yet “we, the minority, will control the State for them and us; we, the minority, will represent the State in the national halls of legislation; we, the minority, will ignore the political rights of the majority, and we will do it in spite of the Constitution and in spite of any law that may be enacted by the Congress of the United States?

...

Now, while it is true that it was not possible for [white southerners after the Civil War] to live in this country without re-enfranchisement, and without a participation in the affairs of the Government, it is equally true that there was no room in all this country for a subject class, and that therefore the black men of the country, recently made freemen, must also, ignorant as they were, be provided with the weapon of self-protection—the same weapon put back into the hands of their former masters—the ballot of the freeman. Ignorant they were, I grant you; but the evil is nothing in comparison with the evil of a subject class. We could have waited; but under the then condition of affairs, or any condition that might be looked for except in the very remote future, there was no hope that the black men once slaves would ever be enfranchised freemen by the consent of their late masters. If they were ever to be put on the road to independence and real manhood, the quicker they started the better for all concerned. Therefore, it was the patriotic duty of the people of the United States, before they surrendered the power to do so forever, to see to it that the black men of the South should have the same right as the reenfranchised white men of the South—the right to cast a ballot, and to have that ballot counted.

...

Hence the time had come to when the ballot must be placed in the hands of every freeman. The evils that came with it must be endured as being less evils than perpetual bondage, and perpetual bondage of the worst type is that kind of bondage which may not protect itself with a ballot. We heed upon this floor the demands of the men with tickets in their hands. No law which strikes at the great mass of voters gets through this House, with the knowledge of the members, without vigorous protest. If there is no vote in the hand of any one of the masses, who heeds the interest of that class of men? Who cares for the men who have not yet attained to the high privilege of American citizenship? That class of people do no count at the polls; that class of people have nothing in their hands with which to protect themselves.

...

... I have shown that in the State of South Carolina only a little over 10,000 Republican votes were cast, with a black population of over 600,000, 95 percent of whom are Republicans, and that the white vote was some 60,000, and that together there were less than 11,000 votes in a Presidential year on a Presidential day for each of the Congressional districts. And outside of the Seventh district there were only about 3,000 Republican votes cast. I know the reason why. More than 50 per cent of the colored votes of that State had been disfranchised by an unconstitutional statute of the State.

...

I point to the fact that in the State of Georgia, with a population of 725,000 colored Republicans, there were less than 35,000 Republican votes, and my friend knows very well that there must be some reason for it.

Now, gentlemen may give a great many excuses for this condition of things, but I can give you a reason out of the sworn testimony presented to this Congress. You want to know what it is. Now, in some entire Congressional districts under the State machinery the vote when returned is absolutely reversed. Fraud taints every ballot-box and permeates the whole community. An honest election is looked upon as

dishonest, and an honest election officer is looked upon as an enemy of his country. In other Congressional districts armed bodies of masked men ride from poll to poll and seize the ballot-boxes and destroy them, and those ballots are not counted to make up the total vote of the State. In other districts, all through the district, ballot boxes are stuff full of ballots that were never cast, and the ballots that were cast are thrown away. In other places in Congressional districts military companies are organized and armed by the State to ride through the districts at night, and to fire cannon morning and evening, as a Democratic witness call for a contestant said, "in order to let the darkeys know that there was going to be an honest election." The night before election these military companies organized and armed by the State ride through the towns shooting into the cabins of colored men to notify them to come out and vote on the next day; and if they do not quite succeed, if in spite of shooting off cannon, in spite of firing into the cabins, the black men are at the polls, these same military companies engage in target practice on the next day with the polling place as a target.

...
And now, Mr. Speaker, I have detained the House very much longer than I intended, because the line of my thought has been broken up by a great many questions and interruptions. I have only to say that fraud permeates many districts in the United States. In many districts, it is connived at by the people who otherwise are the best people. It is the duty of the House to say to them that no part of the Constitution of the United States shall become a dead letter, and unless we propose to allow the fifteenth amendment to the Constitution to be nullified and abrogated, unless we propose to lie down supinely and see 6,000,000 of people absolutely disfranchised and made subject to the law which they had no hand in framing, then we must enact some provision to correct the evils which confessedly exist. I approve of this proposed law. My judgment goes with it, and I am willing to stake my reputation in the future upon this bill if it is once enacted into the law of the land. I shall regard no act of my life, Mr. Speaker, with more approval than the act which gives consent to the passage of this bill.

REPRESENTATIVE HENRY ST. GEORGE TUCKER III (Democrat, Virginia)

...
This is a government of limited powers. There is no power which we have here except that which the Constitution gives us; and, unless this Constitution of the land shows, not doubtfully, but clearly, that this bill comes within it, it is the sworn duty of every member of the House to vote against it.

... I say that the power to pass upon the qualifications of a voter to vote is a power that the Constitution gives to the States that can not be wrested from them. Why, what is it? The second section of the first article says "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."

And yet it is proposed that that power which is inherent in the States shall be taken from them and given for its determination into the hands of the Federal officer appointed under this bill. Read the bill. I refer you to the section to show that this officer under this bill will have the power to pass upon the qualifications of the voter, to say whether or not he can vote. Not only so, but, as elections are held in many States for State officers and Presidential electors at the same time as for members of Congress, this bill seeks to do by indirection what it is confessed it can not do under the Constitution directly, namely, to put *all elections*, State and Federal, under the control of Federal supervisors and deputy marshals. The power to challenge the voter and count his vote under such circumstances, when Federal and State elections are held together, puts the election of State officers in the hands of Federal officials. The power to *superwise* carries with it, by necessary implication, the power to *compel* the doing or *prevent* the doing of something which is the subject of the supervision, and if the Federal Government has no power over the *right of suffrage* in the States how can it give or take away the right to vote by supervision of registration, which is a necessary requirement for suffrage in many of the States.

...
... [W]herever a bill impinges upon the right of a State to control her own affairs as secured to her in the Constitution there we must stop. The history of the Constitution and the instrument itself show

the intent of the framers was that Federal and State powers should be separate and distinct, the Federal Government to be supreme in its powers as defined and limited to the Constitution, and outside or beyond them powerless to change, influence, or control all other governmental powers which were expressly "reserved to the States respectively, or to the people."

...
... Suppose Congress in its wisdom were to pass a law providing that members of Congress should be elected on the 15th of January each year, would not that operate to disfranchise many States in this Union? How could the people get out on the snow-clad hills of Maine or the blizzard-stricken plans of Minnesota to vote on the 15th of January? Why, it shows more clearly than anything else that the people of each State are better qualified to judge of what is proper in conducting their own elections than anybody else.

Again, take the matter of the ballot. Congress has acted on that, and therefore it is said that it is constitutional, because Congress has acted on it. But it is to be remembered that Congress has passed a great many unconstitutional laws. I know not what others may think, but there is nothing about their own judgment more than that matter of a secret ballot. Personally, I believe in the open ballot, by the man singing out before God and man, in the broad light of day, the name of the man he votes for. You may not so believe. Then you ought not to be compelled to have a *vica voce* system. I do not like a sneak or a spy that is afraid to open his mouth and tell the people how he is going to vote. Congress, however, has preferred it and enacted it into law, and by that act has done more in my judgment to disorganize and demoralize the public sentiment of the country than it will ever gain by passing such a bill as this.

Let every man judge for himself. Let every man take care of his own household. Let every people determine for itself what is best for itself, and let others do the same for themselves. A man who insists on taking care of other people's business all the time will find that his won will go to ruin. . . . What we ask for, what the States ask for, is that they may be left to determine for themselves what is best under the Constitution for themselves.

Now, gentlemen, there is another clause of the Constitution to which I have referred that bears very decidedly upon this question. Chief Justice Chase in the case of *Hepburn v. Griswold* [1870], the old legal tender case which has become so celebrated in the land, was called on to construe that clause in the Constitution which provides that "the Congress shall have power to pass all laws necessary and proper to carry into execution the foregoing powers." And, gentlemen, if you conclude that under the second and fourth sections of the first article of the Constitution Congress has the power at any time to interfere and take the elections into its own hands, you have yet to construe those provisions of the Constitution with the subsequent one which provides that it can only pass laws which are "necessary and proper." To carry into execution the powers granted. Now what are "necessary and proper" laws to carry into execution the powers granted to Congress over the election of Representatives? Chief Justice Chase says that the words "necessary and proper" mean good faith, absolutely appropriate means; not for partisan purposes, but in good faith, bona fide. Now, is it "bona fide, appropriate," to the assumption by Congress of the control of elections for Congressmen to appoint supervisors whose duties shall be not to carry on any separate election machinery, but to go on and stick their noses into the election machinery of the States? Is it "bona fide, appropriate" to the purpose of an election law for the elections of members of Congress that State officials should be dragged into the Federal courts and punished for a violation of a State law? Or is it "bona fide, appropriate," to this object that each member of this House should be returned, not by the State that sends him here, but by an officer of this Government appointed for life, amenable to no power, and with no penalty attached to his dereliction of duty? Is it "bona fide, appropriate" to the purpose of passing an election bill that you should put into it a clause providing that the juries of the country should be of one political faith? Put your hands upon your hearts and let your hearts seek counsel from on high and answer me whether that is "bona fide, appropriate," to the purposes of passing an election law?

But observe this clause again: "The times, places, and manner of holding elections for Senators and Representatives, etc." If Congress has the power to pass this bill, it has the power to amend it and make it applicable to the election of Senators. Apply its provisions to the election of Senators, and what

would we have? The Legislatures of the States dominated and controlled in the election of Senators by Federal officers. . . .

Members would be challenged in their right to vote, and the right of the people of a country to representation denied by a Federal official. Confusion, chaos, and collision would inevitably result, and the proud position of free and independent States converted into the subserviency of crouching victims to Federal usurpation and power. Does not the analogy show that the makers of the Constitution could never, never have intended any such power to be given to Congress over the States and their elections for Senators and Representatives? It will not do to say such power in the election of Senators will never be invoked. The political exigency that could disperse the Legislature of a State at the point of the bayonet would not be long in finding a pretext for the application of the club and the billet for the enforcement of its wicked designs.

. . .
And I say further that Congress has no power under the Constitution to punish the officer of the State for the violation of State law.

I am perfectly aware that it has been stated otherwise in certainly a very respectable tribunal; but that decision was only reached by the learned judge, assuming that in the election of members of Congress, the election machinery was operated under State laws, that Congress in effect *adopted* such laws as its own, not by enactment, but by implication; but, if my view of the Constitution is correct, Congress has power only under condition to make or alter these provisions in regard to elections; and in order to make anybody liable under its law it must be clearly a Federal law, and not a State law converted into Federal law by implication. It can not say to the State, "We will let you go on; we will let you have your judges of election and other officers of election, and we will have ours; we will have supervisors and marshals, when our officers disobey our law we will punish them; when your officers, who have never taken an oath to support the Constitution of the United States, but are sworn to support the State constitution, violate their State laws, we will punish them, too." I say it is not right.

. . .
. . . I ask any gentleman who hears me to tell me in all honor and in all candor whether it be worse to steal the vote of a man who does not know how he is voting than to buy the vote before it reaches the ballot-box of a man who could vote intelligently if let alone.

. . .
. . . The bill is sectional. It is aimed at the South. Is there anything anywhere in the bill to show that it is not? . . .

[T]he [Speaker of the House] practically admits . . . that if the defense which he alleges is made by the Southern people, that they defraud the negro for the preservation of their own civilization, were true, that it would be proper and right and admissible. I say he admits practically that, for the preservation of State governments, property and life, the things that are charged against the people of the South might be proper; yet that when you come to national elections it would not do.

Why gentlemen, is it possible that the man who poses as the great friend of the negro would admit that it was proper to kill him or cheat him for one purpose, but very wicked, immoral, and improper to do so for another. . . .

. . .
Now, I say that the South is getting along first rate. We ask you to give us a free chance in the race of life. We know better how to attend to these social questions than you can possibly know, with all your professed patriotism. We know perfectly well that we have a serious problem before us; that we are educating the negro; that we are giving him those rights which make him prosperous and happy; that we are doing for him more than you can do for him and will continue to do it. We ask for our section what patriotic sons of Erin all over the civilized globe demand for their race, "Home rule for Ireland." Our cause is the same.

Now, I ask you where the demand for this bill comes from. Does it come from the negro? Does it come from the Southern Republicans? Where does it come from? The committee to which I have the honor to belong have had some advocates of this subject before it. Who were they? Most of them politicians, and negroes who live by politics, and one poor fellow who has gone crazy since, who is now

in the asylum and who was crazy then, and that class of evidence is the basis of this bill. The business people of the country, North and South, do not want it, for they know that it will disorganize business in many portions of the country, endanger capital invested, and bring discontent and strife where now peace and happiness reign.

...

In conclusion, let me say, gentlemen, that while this bill in my opinion is unconstitutional, Congress has no power to pass it, that the provisions of it are hideous, and that they ought not to be entertained by this House or this Congress; that even if it passes it will never accomplish the purpose whereunto it is sent. You may rely upon that. As was said in the discussion here today, if there be fraud and corruption in the country the only way to correct them is by an enlightened public sentiment which will frown them down, so that a man who deals in fraud, bribery, or corruption will not be countenanced in the community.



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