From the *Congressional Globe,* 39th Congress, 1st Session, Senate, Pages 2764-68. May 23, 1866.

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

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

ARTICLE —.

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

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

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

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

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

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

(2765)

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

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

One result of their investigations has been the joint resolution for the amendment of the Constitution of the United States now under consideration. After most mature deliberation and discussion, reaching through weeks and even months, they came to the conclusion that it was necessary, in order to restore peace and quiet to the country and again to impart vigor and efficiency to the laws, and especially to obtain something in the shape of a security for the future against the recurrence of the enormous evils under which the country has labored for the last four years, that the Constitution of the United States ought to be amended; and the project which they have now submitted is the result of their deliberations upon that subject.

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

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

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

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

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

It would be a curious question to solve what are the privileges and immunities of citizens of each of the States in the several States. I do not propose to go at any length into that question at this time. It would be a somewhat barren discussion. But it is certain the clause was inserted in the Constitution for some good purpose. It has in view some results beneficial to the citizens of the several States, or it would not be found there; yet I am not aware that the Supreme

Court have ever undertaken to define either the nature or extent of the privileges and immunities thus guarantied. Indeed, if my recollection serves me, that court, on a certain occasion not many years since, when this question seemed to present itself to them, very modestly declined to go into a definition of them, leaving questions arising under the clause to be discussed and adjudicated when they should happen practically to arise. But we may gather some intimation of what probably will be the opinion of the judiciary by referring to a case adjudged many years ago in one of the circuit courts of the United States by Judge Washington; and I will trouble the Senate but for a moment by reading what that very learned and excellent judge says about these privileges and immunities of the citizens of each State in the several States. It is the case of Corfield vs. Coryell, found in 4 Washington's Circuit Court Reports, page 880. Judge Washington says:

"The next question is whether this act infringes that section of the Constitution which declares that 'the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States?'

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

Such is the character of the privileges and immunities spoken of in the second section of the fourth article of the Constitution. To these privileges and immunities, whatever they may be—for they are not and cannot be fully defined in their entire extent and precise nature —to these should be added the personal rights guarantied and secured by the first eight amendments of the Constitution; such as the freedom of speech and of the press; the right of the people

peaceably to assemble and petition the Government for a redress of grievances, a right appertaining to each and all the people; the right to keep and to bear arms; the right to be exempted from the quartering of soldiers in a house without the consent of the owner; the right to be exempt from unreasonable searches and seizures, and from any search or seizure except by virtue of a warrant issued upon a formal oath or affidavit; the right of an accused person to be informed of the nature of the accusation against him, and his right to be tried by an impartial jury of the vicinage; and also the right to be secure against excessive bail and against cruel and unusual punishments.

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

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

do not come within the sweeping clause of the Constitution authorizing Congress to pass all laws necessary and proper for carrying out the foregoing or granted powers, but they stand simply as a bill of rights in the Constitution, without power on the part of Congress to give them full effect; while at the same time the States are not restrained from violating the principles embraced in them except by their own local constitutions, which may be altered from year to year. The great object of the first section of this amendment is, therefore, to restrain the power of the States and compel them at all times to respect these great fundamental guarantees. How will it be done under the present amendment? As I have remarked, they are not powers granted to Congress, and therefore it is necessary, if they are to be effectuated and enforced, as they assuredly ought to be, that additional power should be given to Congress to that end. This is done by the fifth section of this amendment, which declares that "the Congress shall have power to enforce by appropriate legislation the provisions of this article." Here is a direct affirmative delegation of power to Congress to carry out all the principles of all these guarantees, a power not found in the Constitution.

The last two clauses of the first section of the amendment disable a State from depriving not merely a citizen of the United States, but any person, whoever he may be, of life, liberty, or property without due process of law, or from denying to him the equal protection of the laws of the State. This abolishes all class legislation in the States and does away with the injustice of

subjecting one caste of persons to a code not applicable to another. It prohibits the hanging of a black man for a crime for which the white man is not to be hanged. It protects the black man in his fundamental rights as a citizen with the same shield which it throws over the white man. Is it not time, Mr. President, that we extend to the black man, I had almost called it the poor privilege of the equal protection of the law? Ought not the time to be now passed when one measure of justice is to be meted out to a member of one caste while another and a different measure is meted out to the member of another caste, both castes being alike citizens of the United States, both bound to obey the same laws, to sustain the burdens of the same Government, and both equally responsible to justice and to God for the deeds done in the body? But, sir, the first section of the proposed amendment does not give to either of these classes the right of voting. The right of suffrage is not, in law, one of the privileges or immunities thus secured by the Constitution. It is merely the creature of law. It has always been regarded in this country as the result of positive local law, not regarded as one of those fundamental rights lying at the basis of all society and without which a people cannot exist except as slaves, subject to a despotism.

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

The second section of the proposed amendment reads as follows:
SEC. 2. Representatives shall be apportioned among the several States which may be included within the Union, according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But whenever, in any State, the elective franchise shall be denied to any portion of its male citizens not less than twenty-one years of age, or in any way abridged, except for participation in rebellion or other crime, the basis of representation in such State shall be reduced in the proportion which the number of such male citizens—That is, citizens as to whom the right of voting is denied or abridged— shall bear to the whole number of male citizens not less than twenty-one years of age.

It is very true, and I am sorry to be obliged to acknowledge it, that this section of the amendment does not recognize the authority of the United States over the question of suffrage in the several States at all; nor does it recognize, much less secure, the right of suffrage to the

colored race. I wish to meet this question fairly and frankly; I have nothing to conceal upon it; and I am perfectly free to say that if I could have my own way, if my preference's could be carried out, I certainly should secure suffrage to the colored race to some extent at least; for I am opposed to the exclusion and proscription of an entire race. If I could not obtain universal suffrage in the popular sense of that expression, I should be in favor of restricted, qualified suffrage for the colored race. But, sir, it is not the question here what will we do; it is not the question what you, or I, or half a dozen other members of the Senate may prefer in respect to colored suffrage; it is not entirely the question what measure we can pass through the two Houses; but the question really is, what will the Legislatures of the various States to whom these amendments are to be submitted do in the premises; what is it likely will meet the general approbation of the people who are to elect the Legislatures, three fourths of whom must ratify our propositions before they have the force of constitutional provisions?

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

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

The committee were of opinion that the States are not yet prepared to sanction so fundamental a change as would be the concession of the right of suffrage to the colored race. We may as well state it plainly and fairly, so that there shall be no misunderstanding on the subject. It was our opinion that three fourths of the States of this Union could not be induced to vote to grant the right of suffrage, even in any degree or under any restriction, to the colored race. We may be right in this apprehension or we may be in error. Time will develop the truth; and for one I shall wait with patience the movements of public opinion upon this great and absorbing question. The time may come, I trust it will come, indeed I feel a profound conviction that it is not far distant, when even the people of the States themselves where the colored population is most dense will consent to admit them to the right of suffrage. Sir, the safety and prosperity of those States depend upon it; it is especially for their interest that they should not retain in their

midst a race of pariahs, so circumstanced as to be obliged to bear the burdens of Government and to obey its laws without any participation in the enactment of the laws.

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

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

(2767)

The committee thought this should no longer be permitted, and they thought it wiser to adopt a general principle applicable to all the States alike, namely, that where a State excludes any part of its male citizens from the elective franchise, it shall lose Representatives in proportion

to the number so excluded; and the clause applies not to color or to race at all, but simply to the fact of the individual exclusion. Nor did the committee adopt the principle of making the ratio of representation depend upon the number of voters, for it so happens that there is an unequal distribution of voters in the several States, the old States having proportionally fewer than the new States. It was desirable to avoid this inequality in fixing the basis. The committee adopted numbers as the most just and satisfactory basis, and this is the principle upon which the Constitution itself was originally framed, that the basis of representation should depend upon numbers; and such, I think, after all, is the safest and most secure principle upon which the Government can rest. Numbers, not voters; numbers, not property; this is the theory of the Constitution.

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

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

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

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

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

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

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

Mr. STEWART. Take a case of this kind: suppose that in the South they should allow the negroes to vote who had been in the Army, or who had educational qualifications; would those who did

vote be included in the basis of representation, or would that be an abridgment of that class of persons so that they would all be excluded?

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

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

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

Here my honorable friend from Massachusetts will observe what I regard as the vital principle of republican government; it is not representation because of taxation; it is this— "the vital principle of free government, that those who are to be bound by the laws ought to have a voice in making them.”

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

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

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

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

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

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

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

"Under every view of the subject"— “Every view of the subject,” not a partial view, but every view which had presented itself or could present itself to the mind of that great man—"it seems indispensable that the mass of citizens should not be without a voice in making the laws which they are to obey, and in choosing the magistrates who are to administer them. And if the only alternative be between an equal and universal right of suffrage for each branch of the Government, and a confinement of the entire right to a part of the citizens, it is better that

those having the greater interest at stake, namely, that of property and persons both, should be deprived of half their share in the Government, than that those having the lesser interest, that of personal rights only, should be deprived of the whole. "

Now, apply that great principle as broadly as it is laid down by Mr. Madison on the page from which I have read, and how can any man of true republican feeling, attached to the essential principles of our system of government, refuse the right of suffrage to the whole negro population as a class?

Mr. JOHNSON. Females as well as males?

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

Mr. JOHNSON. "Persons."

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

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

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

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

this section of the amendment in the committee. I do not believe, if adopted, it will be of any practical benefit to the country. It will not prevent rebels from voting for members of the several State Legislatures. A rebel, notwithstanding this clause, may vote for a member of the State Legislature. The State Legislature may be made up entirely of disloyal elements, in consequence of being elected by a rebel constituency. That Legislature when assembled has the right, under the Constitution, to appoint presidential electors itself if it shall choose to do so, and to refuse to refer that question to the people. It is the right of every State. It is very probable that the power of the rebel States would be used in exactly that way. We should therefore gain nothing as to the election of the next or any future President of the United States. Rather than this, I should prefer a clause prohibiting all persons who have participated

in the rebellion, and who were over twenty-five years of age at the breaking out of the rebellion, from all participation in offices, either Federal or State, throughout the United States. I think such a provision would be a benefit to the nation. It would ostracize the great mass of the intelligent and really responsible leaders of the rebellion.

Mr. CLARK. I will state to the Senator that I have drawn an amendment something of this kind, which I will read, to see how it would meet his view, if he will permit me at this time:
That no person shall be a Senator or Representative in Congress or permitted to hold any office under the Government of the United States who, having previously taken an oath to support the Constitution thereof, shall have voluntarily engaged in any insurrection or rebellion against the United States, or given aid or comfort thereto.

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

Mr. HOWARD. I am by no means sure that I should not be quite willing to support such an amendment as that suggested by the honorable Senator from New Hampshire.
Mr. JOHNSON. Will the honorable member from New Hampshire inform me whether he proposes to offer that as an amendment?

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

Mr. HOWARD. The fourth section of this amendment declares that—
Neither the United States nor any State shall assume or pay any debt or obligation already incurred, or which may hereafter be incurred, in aid of insurrection or of war against the United States, or any claim for compensation for loss of involuntary service or labor.

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

The assumption of the rebel debt would be the last and final signal for the destruction of the nation known as the United States of America. Whatever party may succeed in so wicked a scheme, by whatever name it may be called and under whatever false guises or pretenses it may operate, if it succeed in assuming this indebtedness, puts an end first to the credit of the Government, and then, as an unavoidable consequence, to the Government itself. I do not propose to spend time upon this branch of the subject. I simply refer to it as a necessity of such magnitude as in my judgment to demand our action and the action of the States of the Union

without delay. It is necessary to act, to extinguish this debt, to put it beyond the pale of party controversy, to put it out of sight, and to bury it so deep that it can never again be raised to life in such manner as to become a theme of party discussion. The amount of that debt is probably not less than five billion dollars. We do not know its exact amount, and I am not sure that it is possible ever to ascertain it; but if there should ever be a fair prospect of its assumption by the United States or by the States it is perfectly certain that the evidences of it would multiply thicker than the leaves in Vallombrosa. Those evidences are a great curiosity in the history of commercial affairs. I hold in my hand a specimen of the confederate currency. I will read it for the information of Senators and to give it a permanent registration among our proceedings:
Richmond, December 1, 1862.
No. 81413.
Six months after the ratification of a treaty of peace between the Confederate States and the United States of America, the Confederate States of America will pay to the bearer on demand $100.
Signed by the Treasurer and countersigned by the Register of the Confederate States of America, at Richmond.

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

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

keeping this question open before the country, and enabling the foreign holders of cotton bonds to keep the political atmosphere of this country in a turmoil for the future with a view ultimately of getting their pay from somebody. It is time for us to put our hands upon this whole thing and to extinguish all hope.

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