CIVIL RIGHTS.

SPEECH

OF

HON. THOMAS M. NORWOOD,

OF GEORGIA.

DELIVERED IN THE

UNITED STATES SENATE,

April 30 and May 4, 1874.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1874.

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The Senate having under consideration the bill (S. No. 1) supplementary to an act entitled "An act to protect all citizens of the United States in their civil rights, and to furnish the means for their vindication," passed April 9, 1866, the pending question being on the amendment of the Senator from Ohio [Mr. THURMAN] to the amendment made as in Committee of the Whole, to strike out the second section—

Mr. NORWOOD said:

Mr. PRESIDENT: Believing in the "eternal fitness of things," and that everything should be done "decently and in order," I have always endeavored to adapt my speech to the solemnity of the occasion and the dignity of the subject to be considered. And though I shall faithfully attempt to adhere to this salutary rule, it is with a painful consciousness that it is impossible for me to rise to the grandeur of either the occasion or the subject. And nothing sustains me but the ambition to share with the Senator from New Jersey the imperishable honor of bringing about the happy consummation foreshadowed by him on yesterday, when the white man and black, the mulatto and quadroon, the coolie and Digger Indian, shall be gathered together, a united family, in one unbroken circle, around one common soup-bowl and using the same spoon, while shielded by the Stars and Stripes and regaled by the martial measure and inspiring strain of—

John Brown's soul is marching on.

"When the morning stars first sang together for joy" it might have been worth some dollars to the American people and the balance of mankind, if there be any, had the republican party been present. And though a matter of minor consideration, perhaps, it might also have saved much blood. For when the Almighty said, "Let us make man," this Senate would have given its advice, and with equal certainty, would never have consented to man's creation, except in accordance with the Declaration of Independence. That party would have caucused on the question and have resolved "to fight it out on that line if it takes all summer." The flowers of the field might vary in splendor and beauty; the lion might be made monarch among beasts; one star might differ from another star in glory; but absolute equality, moral, mental, physical, political, social, in churches, in theaters

graveyards, every where in the world and out of it, must be ordained among men, women, and children. Differences in color, differences in form and capabilities, were and are all mistakes, and we are now engaged, with such decent respect for the opinion of the Author of these errors as the necessity for votes next fall will allow, in making the necessary correction.

A famous sculptor once left his studio in charge of his servant. The servant, conceiving his genius superior to that of his master, attempted an improvement in a favorite statue. The master returned to find his idol—the labor of years—converted into a *torso*. But skeptical would he be, indeed; ignorant of the progressive strides made in this country in the decade past, must he be, who doubts the success of this small creative job. Nine years ago four million slaves were set free; the next year, clothed with civil rights; the third, armed with the ballot, like blind Polyphemus with his club; the fourth, makers of laws, of governments, and rulers of men, their former masters. Within this brief time they were graduated in the school of republican statesmanship, passing at a bound to the degree of doctor of their learned laws; and in ten States the whites were dismissed from office, and these learned republican doctors were set up on end like ten-pins, and put in charge. History furnishes no parallel to this triumph in the plastic art since God made man of clay.

There is but one recorded instance which the boldest fancy would dare suggest as a fit comparison, and that is, the redemption of the Jews from Egyptian bondage in a single night. But in that one fact only is the comparison good; for though they were under the guidance and instruction of Omniscience for forty years, they did not make the advance in statesmanship which the "man and brother" attained, under the new dispensation, in forty days. Of the six hundred thousand who went out from Egypt, but two were found worthy in forty years to give and administer law. The republican party manufactured over six hundred thousand law-givers in forty minutes. The Jews were instructed by signs and wonders, by miracles, and in the Decalogue, and that by the Almighty himself. The negroes were regenerated without any instruction, and by the republican party. Moses was taken by divine appointment from his bulrush cradle and educated for many years to fit him to be a ruler; but the "man and brother," while standing in the corn-field, hoe in hand, and without any warning of the approaching calamity, was made a republican statesman by act of Congress. His superior wisdom was needed by the republican party to guide their councils, and they called him, like another Cincinnatus, from the plow, and placed him at the helm of State. How this wonderful change was wrought in these political neophytes in the twinkling of an eye, making them masters of the science of republican statesmanship, whose tortuous ways and

eccentricity have set at defiance all human learning and experience, it is impossible to conceive, except upon the supposition that a miracle was performed, or on the more reasonable hypothesis that Providence, foreseeing their inevitable destiny to become republican statesmen, benevolently prepared for their easy advent, by grading and leveling the dominant order of statesmanship to the full measure of their natural capacity. But it is only just to say, before leaving this comparative view, that in the opinion of some exegetes, who are not republicans, if the redeemer of the Jews, instead of trying to elevate them in moral stature, instead of seeking to fit them for a high and great destiny, had only desired their votes to prolong His rule, the negroes might not have so far surpassed the Jews in intellectual growth and statesmanship.

But while history fails to furnish a parallel to this transformation, fiction and fable are not so much at fault, and yet even they can furnish but few such instances.

One not familiar with the achievement; who has not studied its exquisite tracery and stood in awe while contemplating its colossal grandeur; and remembering that out of the smoke, the din and roar of surging battle the negro sprang into the sunlight of freedom, would, without due reflection, suggest in comparison; the rising of the goddess of love and beauty from the depths of ocean, more radiant in loveliness than her own bright chariot of pearl, or the springing of Minerva—the embodiment of wisdom—full-armed from the head of Jove, cleft by the forger of the thunderbolts of war. But in these we see only an illustration of the perfection of the new-born statesman, while the power and devotion of his creator are lost to view. To catch a glimpse of the burning passion of the republican party for their colored equal; and of the heavenly art displayed in his divine transformation; and to faintly realize the depth of darkness from which in an instant he was raised to the level of republican statesmanship, we must recur to the moment of transition, when the cold, dull, marble statue, at once the creation and the adoration of Pygmalion, transfused with the fervor of his passion, and rapturously quivering into life, gracefully glided into his amorous arms, matchless in form and moving, the paragon of beauty.

There is much of resemblance also in the brief but touching biography of the noted Solomon Grundy:

"He was born on Monday,
Christened on a Tuesday,
Married on Wednesday,
Took ill on Thursday,
Worse on Friday,
Died on Saturday,
Was buried on Sunday

And the biographer, at this point, plaintively tells us that "this was the end of Solomon Grundy." [Laughter.]

These were the seven stages in the brief but eventful life of Solomon Grundy, and our colored friends have with equal rapidity passed six stages, and the morning of the seventh is about to dawn. One day, a slave; the next, a freeman; the next, invested with civil rights; the fourth, a voter; the fifth, a ruler; the sixth, a citizen—for let it be remembered that they were voters and rulers before they were citizens—and the seventh, to be placed on social equality. Surely these are glories enough even for the republican party. The world has watched its handiwork and marked with increasing wonder, the steady improvement so visible in each production of its magic power, even down to the unveiling of its *chef d'œuvre* in the execution of Louisiana.

This grand achievement lacks nothing but originality. The original of this excruciating model, though inferior in the execution, is superior in conception. It exhausted the combined genius of the three greatest sculptors of the city of Rhodes. It is the statue of Laocoön and his tender children slowly but surely meeting death under the contractile power of a serpent's coil, and in the temple of his worship, because he offended a jealous heathen god by giving warning of approaching danger, and striking in defense of home and country. The Greeks even of to-day proudly boast of the chryselephantine statue of Jupiter, the masterpiece of Phidias, himself the master of all masters in all ages of the world. And as long as under republican rule and interpretation, self-government means one-man power; as long as freedom means despotism; the bayonet means the ballot; vice means virtue, and ignorance statesmanship, the republican party can point despots and tyrants, with exultant air, to the satrapy of Louisiana as the pride and glory of republican civilization.

But let us indulge the hope—as "it is pleasing to man to indulge in the illusions of hope," however faint—that there is nothing ominous to the republican party, on either its white or colored side, in the sudden birth, the rapid growth, and the speedy demise of the lamented Solomon Grundy. There is a terrible resemblance in their birth and growth; but we must remember that the lamented Grundy married early, whereas this prodigal youth—the republican party—remains not only single, but is singularly unique, being unlike anything created or spontaneous; though for eight long years he has been coquetting with and affianced to the American branch of the Ethiopian family, commonly known as the "colored people." Rather prodigal, I say, he has been, though he started in life on high moral ideas, and, like the brakeman on the East Tennessee and Georgia Railroad, he promised, in the beginning, to run his train "on high moral principles." But he has fallen from grace. Between ventures in Credit Mobilier

stock, Jayne contracts, Sanborn contracts, and other moiety contracts, custom-house rings, District rings, railroad schemes, the business of manufacturing States and statesmen, robbing his southern neighbors, and other speculations and peculations, he has become diseased in reputation. He is reputed to be dividing his time and honors between philanthropy when it pays and public plunder as a trade. His Uncle Sam has lost confidence in his finances, his friends are falling off, creditors are sweeping his estates, and his colored inamorata charges that he has trifled with her affections, and threatens to abandon him, unless he will call in the high priest (Congress,) at once, and solemnize the marriage.

And now, Mr. President, these "two high contracting parties" are before us for the sixth time to be made one political flesh; and as the iron tongue of Time has called the hour of twelve meridian on the first Monday in December of each year for many weary years, we have seen this sorrowful bride, melancholy as Evangeline seeking for her long-lost Gabriel, enter this Chamber with slow and mournful step and head with modest droop, and thus march down yon aisle and stand before that hymenial altar to fulfill her nuptial vow. From the sidereal precision with which she has annually swept within our view, one with poetic fancy might have imagined her a planet of the sun, if the close pursuit of her numerous bridesmaids, robed in white illusion, had not at once suggested the coming of a comet with its nucleus in total eclipse. Unpoetic as I am, I have thought that astronomers are wrong, who say, the seventh of the weeping Pleiades is lost. She has not been lost. Her brightness was only obscured, and it was reserved for the telescopic eye of the republican party, eight years ago, while sweeping heaven and earth in search of votes, and turning heavenward, for the first and it is thought the only time, to discover her in right ascension and surpassing glory, and to fix itself in selfish adoration on her charms.

If the entrancing power of one wandering Pleiad can thus move the greatest power of the globe, well might Job inquire, "Canst thou set bounds to the sweet influences of Pleiades?"

Here, again, I have said, is this lonely pilgrim weeping and waiting for that tardy groom and that tardier nuptial joy. Ranged beside her again stand her ever-faithful bridesmaids clothed in white, symbolic that in this union, as in a ray of light, all color will be absorbed, and this dark bride shall be pure white. Foremost and first among them is one bearing over her serene bosom the general motto "Without distinction of race, color, or previous condition of servitude." Beside her is another adorned with the motto "Equal enjoyment of the accommodations, advantages, facilities, and privileges of cemeteries." But time will not allow a notice of them all. My eyes, however, fall on one who is rather advanced in years, but bearing herself with all

he innocence and playfulness of childhood. Her levity really is in pointed contrast with the sober, solemn bearing of all the rest. Upon the brow she wears a wreath of flowers, slightly faded, however, about like Atalanta's after she stooped to take the golden apples. From her seeming familiarity with the bride it might be supposed she could say of her as the Teuton said when asked if he knew a certain member of the porcine family, "We were raised together." Her zeal to have the nuptials solemnized is shown by being adorned with two mottoes, either most æsthetic, appropriate, and suggestive, whether adopted from "internal suggestion, or the bias of jurisprudence." The one reads, "Full and equal enjoyment for the bride in circuses and menageries, especially of the clown, for Motley's the wear.'" The other, "A little learning is a dangerous thing."

But tempting as is the loveliness of this scene to make me linger and dwell upon its ever-springing beauties, I must pass on. I have risen as the friend of innocence to solemnly protest against these bans. This trusting Ethiopian for eight years of unrequited faith has been the victim of misplaced confidence. That scape-grace has deceived her trusting heart from the beginning of their courtship. He has broken time and again the honeyed vows he has so often made to her. The first tender pledge by which he won her heart has not been kept. He promised if she would obey, love, and honor him, and elevate him to offices of profit, he would give her "forty acres and a mule."

This promise he has not only broken, but he has added deceit to perfidy. For strolling forth with her, hand in hand, in the Land of Flowers, under the glimpses of the moon, in the sweet spring time of nature and of reconstruction, among blossoming oranges, and feeling like Adam and Eve in paradise, but looking like a lovely brace of Diana's foresters, and carrying in his other hand all his worldly goods, his lares and penates—the immortal carpet-bag—after passing out of sight, he tenderly pressed her hand and bid her pause, as he had come to set the boundaries of her land. Then gently placing that sacred depository of the reconstruction acts and his extra striped shirt upon the ground, and untying therefrom the cotton string which a few nights before he had borrowed from a colored friend while he was sleeping, and murmuring meanwhile his oft-repeated protestations of devotion to his fair betrothed, whose chuckle spoke, responsively, her great delight, he drew forth four streaked stakes, such as Jacob used when he walked forth to swindle Laban out of his flocks, and measuring off a rood or two of land, stuck down the stakes and told her that was her domain. Then sadly lingering, as only lovers can when doubts arise,

"If e'er again should meet those mutual eyes,"

with touching tenderness they exchanged fit emblems of their mutual regard and trust. In token of her own she gave, at his request, a paper with emerald finish on the back and bearing on its face a printed promise of his Uncle Sam "never to pay five dollars to the bearer," while he, determined that the family reputation for plighted faith and non-performance should never be dishonored at his hands, gave in return an autographic manuscript which breathed the depth of his devotion, and then he went his usual devious way in darkness to his den. That manuscript, upon interpretation to that bewildered baron, was found to read as follows: "As Moses lifted up the serpent in the wilderness, so have I lifted his last five dollars out of poor old Joe." [Laughter.]

The energy displayed by this prodigal is the old courtship of Justice Shallow seeking to confer the honor of his *armigero* and *Cust-alorum* on Mrs. Anne Page. That learned pundit did not discover the charms, the graces, the social equality of Mrs. Anne until Sir Hugh Evans generously suggested that she possessed the attractive virtue of seven hundred pounds. "Seven hundred pounds, and possibilities, is good gifts," said that hymenial diplomat. Eight hundred thousand votes and possibilities are a mighty ally, says the republican Machiavelli. And here lies the secret of this billing and cooing. The eight hundred thousand votes cannot be had unless the owner of them be received on social equality. The doweragess must go with the dower. But when he takes her for better or for worse it remains to be seen whether he will secure the gifts and possibilities.

Let us suppose the wooing twain made one; and the bride, blushing modestly, receives the congratulations of exultant friends. The friends retire, and the happy groom and bride are left alone; he to dream of glory, of power, of empire, through the dower and expected possibilities, she of equality at *fêtes* and executive receptions and senatorial entertainments, and in hotels, theaters, circuses, churches, and cemeteries. Ecstatic over his matrimonial success, he revels in contemplation of the triumphs by which his freedom a century ago was won; he regales her with an eloquent rehearsal of the heroic deeds done at Concord, Ticonderoga, Monmouth, Trenton, Savannah, and Yorktown. At the close of this patriotic rehearsal the bride yawns, and lovingly inquires when the next circus will come to town. Passing at a bound from the Revolution of '76 to the war of 1861, he tells his beloved of the glorious triumphs in arms which were begun for and resulted in her liberation. He is eloquent in portraying the injustice of Providence in permitting her to be enslaved, and grows complacently grand in demonstrating that he, despite Providence, struck off her chains and set her free. Then, "turning to see the smile her cheeks put on," as in trusting innocence she reclines on that fountain of philanthropy, his gushing bosom, he finds his beloved fast asleep and sonorously snoring.

Being a ruler and the head of innumerable money-coteries—vulgarly known as "rings"—whose gravitating center for twelve years past has been the pocket of his wealthy Uncle Sam, he has credit, of course, and establishes his respectability by taking a bridal tour. They visit their Long Branch—formerly known as Louisiana, but which has recently been let by him to a military commission consisting of the Federal Executive and judiciary to make experiments in testing the relative merits of a despotism and a republic. True, the enraptured tourists will not see the Executive there in person, but the brightness of his glory will gleam in his bristling bayonets. But they will be measurably compensated for this loss, in beholding his judicial lieutenant (Durell) playing the rôle of Bottom, the weaver, kindly attended by his prompter and keeper, (Kellogg,) who constantly coys his amiable cheeks. Jumping or kicking down all barriers set upon him, the creature strays at large, bearing in blazoned capitals between his ever-lengthening ears his advertisement, so comforting to this young man's heart: "States made to order; despotisms guaranteed." Visiting their Newport—South Carolina—they see Moses and his profits; not the Moses of old, nor the prophets of old, but Moses of the negro millennium and the profits of insatiable Mammon; not Moses of the Red Sea, but Moses in the dead sea—the sea of dead thrift, dead consciences, dead hopes, dead hearts, everything dead or dying except the crawling, squirming, slimy, icy worms that fatten on the body of this death.

But while our prodigal hero is treading this primrose path, his leasehold estates are falling away. Judgments are rendered against him in Ohio, New Hampshire, and Connecticut by tribunals from which there is no appeal, except by the novel remedy insisted on by the Senator from Wisconsin, to poll the jury, set aside the verdict, and order a new trial by act of Congress.

The fall terms are approaching, other trials are pending, and if defeated he must vacate other and much larger premises. With true knightly chivalry he has hitherto refrained from calling on his bride for help, lest she might suspect the alliance was mercenary. But the time for delicate forbearance is past. His needs are inexorable. In accents as tender as old Rip's when stealing his bottle from Gretchen's pocket, he confesses his bankruptcy unless she will redeem him. The Congress-made statesman as tenderly replies that she intends, like other republican statesmen, to "place her votes where they will do the most good." In vain does he invoke to his aid the tender memories of the past, and portray in frightful colors his ruined condition should she desert him. The forty-minute statesman cruelly responds with the worldly philosophy of Mr. Pickwick, that she goes with the strongest side. Inspired by despair he rises "to the height of his great argument." He recounts again in fervid eloquence the glories of Ticon-

deroga, of Brandywine, of Cowpens, and of Yorktown. The machine-made statesman unconsciously revealing her rich stores of historic knowledge, sharply retorts that brandy and wine have been his ruin, and upbraids him because he had never told her before that he owned any cow-pens. [Laughter.] As a last hope, he strikes for the tenderest chord in a mother's heart—the love of her offspring. He points to their dead—to Georgia, Virginia, and Texas, those dismal babes who were sown in corruption, but raised in incorruption. He points to their sick infants, Arkansas, North Carolina, and others, and finally, as "hope elevates and joy brightens his crest," he reminds her of their beautiful, blooming, lovely, lively republican twins, Louisiana and South Carolina.

The miracle-wrought statesman, asserting her rank of doctor of the learned laws rejoins in language at once characteristic and pathological, that she cares nothing for their dead; that their sick babes would soon die, and that the twins had crushed his spinal column while carrying them in his arms on offensive exhibition to the world.

Mr. President, our hero is not happy. He determines on a divorce, and straightway rushes to his guardian senatorial uncle. The case is stated with all the indignant emphasis of one who feels he has been swindled, and he raves of his loss. The counselor perceiving the situation, gives his opinion that the husband is entitled to the property of his wife—that he can hold her and all she possesses. The ward, aroused, appeals to know if a divorce be possible. The guardian, equal to the occasion, pockets that opinion, draws forth another, and demonstrates that the wife at the time of the union was clearly *non compos mentis*, and that marriage being but a civil contract must be supported by a consideration. And as the consideration—the votes—for which he had conferred social equality and the blessings of "full and equal enjoyment of menageries and cemeteries" had wholly failed, the contract is void. He advises the unhappy Jeremy Diddler to repair to Chicago, organize himself into a convention, and dissolve the bonds.

Mr. President, let no one suppose from the illustrations I have given of the degree of intelligence possessed by the colored people that I mean to ridicule their ignorance. My purpose is far from that. No one deplores their benighted condition more than I do. Were they intelligent, educated, they would not be the tools and dupes they are of wicked adventurers. They would spurn their serpent-like approach with indignation and contempt. Education would be to them Ithuriel's spear to unmask these ugly and venomous toads who carry not even that precious jewel in their heads.

No, sir; I have thus spoken of the average intelligence of the negro race in the South—and which I might have illustrated in a thousand ways—to lay bare the folly, the wickedness, the crime of raising them

from Egyptian darkness and semi-barbarism to the high, the responsible, position imposing duties and intellectual effort to which the genius and training of the Websters, Clays, Calhouns, the Adamses, Hamiltons, and others not unworthy to be named with them, were only equal, and none superior. It was a crime against civilization and liberty which has no parallel in the course of time, and done solely to perpetuate party domination.

But the democrats, and especially those from the South, are continually charged by the republicans with prejudice against the negroes. If they mean to say that we are so far prejudiced as not to be willing to accord to them all the rights of citizenship which we claim for ourselves, it is not true. But if it means that we are opposed to social equality, it is true of both democrats and republicans, and any profession of a republican that he is not opposed to social equality with the negro race is sheer hypocrisy.

When he spreads the feast, and beauty and wit are summoned to revel for a season in the luxury of intellectual foil, why is it that the perfumed messenger of hospitality visits not, like pale Death, with equal pace the door of the noble black man? Is it because there are none eloquent and witty among this million of republican statesmen? Verily, no! The eloquence of one now no more has so often rung in this Chamber in depicting the high oratory and intellectual power of the colored man, that its weird echo still lingers upon these walls. And whenever a democrat in the other wing of this Capitol thrusts his spear in the side of this hollow horse, the republicans stuff at once and set upon his legs some son of Ham to reply, and the republican press the following day regale the whole country with full particulars of the native, cannibalistic art by which the democrat, in the space of five minutes, was torn in pieces, devoured, and digested by his voracious adversary.

Is it because the colored man can boast no genealogy; or can display no family tree; or wears no coat of heraldry? Certainly not. It is the pride and boast of every true republican that he has no genealogy, and it requires a trip across the Atlantic, at the public expense, to subdue his contempt for all armorial distinction.

Is it because there are none brave among them? The republican party has often assured us that in the late war "the colored troops fought nobly," and the Senator from New Jersey repeated the declaration in our hearing on yesterday. It is true, that interwoven with the dreadful realities of that struggle, there is much of fiction and romantic episode; many imaginary instances of inspiring heroism, displayed by the colored troops. Fact and fiction are lamentably mingled in inextricable confusion. But there is one exceptionable instance of daring and of death, and so notably established on the testimony of a single eye-witness, that the Senate must remember it,

and it is worthy of recounting even in this august presence. I see that the quick perception and historic learning of this body have already anticipated my discovery, and I would even now forego the thrilling narration, but for the fear, that some future Munchausen might charge me with prejudice against the objects of the Judiciary Committee's special devotion, should I decline to furnish so valuable a contribution to his peculiar style and school of history. I refer, as you know, to the Balaklava-charge made by the colored troops, at the witching hour of dawn, on empty stomachs—bayonets fixed, nipples uncovered—and under command of a general of renown, on the 29th of September, 1864, at New Market Heights. The historian—who was the general then commanding, and who seems to have been the only survivor of those colored troops—tells us the story with charming simplicity and with the eloquence of unbridled fancy. He says, that being himself in the rear, where he intended to remain, and wholly uncertain whether the charge would be feebly to the front or with frantic heroism to the rear, he ordered, as a precaution for personal security, the nipples of the guns to be uncapped, and offering up the prayer of Falstaff, "God, keep lead out of me," he gave the order "Charge!" [Laughter.] He says that there fell, within a parallelogram just ten feet wide and three hundred yards in length, the exact number of five hundred and forty-three of his colored associates, or one man to every twenty and three-tenths inches; that as soon as they fell, mounted on his fiery Pegasus, like feathered, or "Harry" Mercury, he marched solitary and alone to one end of that slaughtered heap, and fixing one eye weepingly pendent over the dead and cocking the other fiercely on the enemy—the one tearful as Niobe's, the other glowing like fiery Mars'—he rode, with arms akimbo, through that parallelogram, over that hecatomb of his companions, to the farther end—his horse meanwhile dancing a minuet in the benevolent endeavor to find ground on which to plant its reverential feet.

This was an exploit worthy of deification. Pity it is, it had not been performed in the pre-Homeric or Hesiodic age, as that generation, so appreciative of horse gymnastics, would have deified and translated the heroic actor, and he would now be enjoying the beatitude of hero-worship in the constellation of Aries or Taurus; or, happier still, he and that horse might now be a bright, particular constellation in themselves, under the proper name of Equus-anthropos, which lovers, at parting, would designate to gaze upon at the tender hour "when twilight dews are falling fast," and renew their vows of devotion.

But why that humane general should have ridden that tender-hearted horse over the dead bodies of his colored associates, instead of making a brilliant flank movement along that geometric holocaust, such as only he can when moving on a custom-house, I have fatigued my imag-

ination in the vain endeavor to discover. Perhaps, like Mrs. Malaprop, he was trying to ascertain the "perpendiculars" of the slaughter; perhaps it was to accommodate the angle of his vision; perhaps to test the sensibilities of that horse. But conjecture is all in vain. It was simply one of those direct forward movements over the bodies of one's friends, so often witnessed in political strategy, and never known in military tactics, that it must remain a moral wonder until lapse of time and oft repeating shall consecrate it as a truth, or until some cruel Œdipus shall rise to solve the riddle and destroy its artful inventor.

But gallant as was that fatal charge, and heroic and solemn as was that perilous equestrian exploit, they pale into paltriness in presence of the sublime sequel to this military evolution as given in the simple story of this historian. He says that having finished that horse *courvanto*—consisting of a coupee, then a high step, then a balance—he sounded a solemn halt, faced mournfully about, fixed his eyes again as already described, gave the order, "Attention, General!" and in chronic absence of the Bible, drew from his holster-case a pocket edition of the Massachusetts Pilgrim's Progress issued under the Maine liquor law, and kissing one end devoutly with his face turned upward, he administered to himself a solemn, corporal, and general oath, that so long as his surviving colored companions would vote to make him governor of Massachusetts or a Representative in Congress, he would spasmodically devote the idle moments of the remainder of his political and official life, in a feeble effort to secure to them the great constitutional right to attend "without distinction of race, color, or previous condition of servitude" every theater, circus, and menageric in the United States of America and the Territories thereof. [Laughter, and manifestations of applause in the galleries.]

The PRESIDENT *pro tempore*. Order! Applause is out of order. The Chair will remind those persons occupying the galleries that if the rules of the Senate are violated the galleries will be cleared.

Mr. NORWOOD. He then sealed his oath by pressing his feverish lips once more to the bibulous end of that cherished volume, and calling in the eye which had meanwhile stood sentinel on the enemy, he dismissed himself from the parade.

Such is a tame picture of the heroism displayed on that tearful day. Truly and wittily has it been said that history is *his* story! But true in every essential, or false in every particular, as may be the grandiloquent description of that charge, it serves my purpose with equal force. For I am not trying to sift the truth from history. I am arraigning the republican party for the manner in which they treat the colored freemen of America in refusing to recognize them in all the social relations of life, while endeavoring by national legislation to force the poorer class of whites, who are their constituents, into social equality with the blacks. For, sir, this is the true issue

made by this bill, and they cannot bliuk it under the flimsy pretext of securing civil rights.

Do the republicans refuse social equality to the negroes because there are none among them intellectual or learned? Why, sir, a few months ago a colored man delivered in the House of Representatives a dissertation on civil rights so full of classic lore, historic research, and illogical conclusions, that base envy has even hinted the name of more than one republican Senator as the author of that production. Besides, many of them fill eminent chairs of learning, professorships in colleges, and petty offices by grace of executive patronage. Indeed, in every locality in the Southern States where it is necessary to gain the votes of the many through the influence of a few retainers, a tub is thrown to the whale, and here and there, with a rarity that is chillingly exceptional, we see a colored man beguiled, through the gift of a petty office, into the flattering delusion that he is held in cordial regard by the republican party.

And when the inaugural ball came off last year in that grand structure which "rose like an exhalation from the deep," "as by the stroke of the enchanter's wand," when at night—

> "The nation's capital had gathered then,
> Her beauty and her chivalry, and bright
> The lamps shone o'er fair women and brave men"—

what post of honor and distinction was there assigned to these dusky children of the sun who by their votes had raised their leader, that day inaugurated, to his toppling, dizzy height? Why did we not then behold some of those fair jeweled arms, weary with the weight of their glittering wealth, also adorned by a few of these charcoal diamonds so much treasured at the polls by the pale masters of those ceremonies? And of the thousands who on that night "chased the glowing hours with flying feet," dancing, like Miriam, in joy at the nation's redemption from the enemies of the colored race, why was it that there skulked and flitted here and there but a baker's dozen of the nation's wards, who came, too, in such "questionable shape" and in such Caucasian disguise, that Nott and Gliddon, had they kept the door, would have resigned their posts from mortification and disgust in the desperate effort to determinine their ethnology? And yet these few, as they floated and spun in sequestered knots among that white multitude, were, to their joy on that occasion, like a dead fly in the apothecary's ointment.

Were the managers of that festivity southern men and women? Were they democrats? Were the invited guests southerners only? Were there no republican fathers and sons, mothers and daughters, in that exclusive assemblage? Tickets were distributed to Senators and Representatives to be issued by them to their friends and constituents "without distinction of race, color, or previous condition of

servitude." And which Senator here, with blandest suavity, or even by act perfunctory, solicited the pleasure and honor of the company of his friend, Scipio Africanus, or of his sister, Miss Cleopatra Congo, or even of his distant relative, Miss Angelina Octoroon?

Why did not some enterprising statesman in the republican party, with eyes fixed upon the White House—if possibly there be one among them who has sunk so low—pluck the ripened opportunity so golden in promise and thus seal to himself a million voters?

Republican Senators wish to compel common carriers to open their cars and ships to all comers alike; in other words, to force the whites to this intimate association and close contact, or to stay at home or provide their own conveyance. The poor are here to be the victims. The rich can gather up their velvet trains and sweep contemptuously by the poor whites and negroes banked and huddled together, and take luxurious refuge in a palace car. Thus money is to establish class and caste. The millionaire—the shoddyite who during the war risked one and gained four—like another worm that retires and rests secure in its own cocoon, can fold himself with dignified reserve in robes of silk, and with complacent smile wave, as with a golden wand, the black man to a respectful distance.

Here in the shadow of this Capitol we see in miniature the working of this law. Here, too, we see how the honorable Senators who favor this theoretical equality carry it out in practice. Two lines of street-cars come to the doors of this temple where worship the devotees of social equality, hooded and consecrated under the name of "equality before the law." Over one the fare is five, over the other seven cents. Over one passes no dead-head; the car blazes with the warning, in offensive prominence, "No one rides free over this line." This is not only the anti-dead-head, but it is also the more expensive line. The other company not only charge but five cents for a single ride, but, moved by that vicious custom which has almost become a law, they issue to all Congressmen free passes for the year. Over this line ride the poor, both white and black, but where does—not the ungodly, but—the Congressman appear? When he has finished his sublime philippic against the tyrant, Prejudice, and folded his toga around his towering form and steps forth a walking advertisement of social equality, or, if he prefer, "equality before the law," he moves of course, with logical instinct, straight to the black man's car, and demonstrates in practice all he has taught by precept. Strange to say, his instinct—unmixed with prejudice of course—carries him the other way. This seems strange to the unsophisticated. No doubt it does to the black man, who is just beginning to discern the delicate shade of distinction drawn by his republican friends between himself and a ballot-box. He knows they stuff the box with ballots, but he is just beginning to realize, from his unsatisfied appetite, that they have been

stuffing his small capacity with soft sawder, or, in his own expressive language, with "soff sawdust."

But it would be grossly unjust to intimate that the honorable friends of the colored man avoid the avenue line because he is ever to be found aboard. There must be other reasons. No doubt they ride on the Metropolitan line because it is anti-dead-head. No Senator ever rides as a dead-head. He would scorn himself; yes, scorn any man who would offer to pass him as a dead-head. He would as soon submit to have his salary increased as to be classed among the dead-heads. And I do not know a subject on which all Senators, except eight or ten, are so desperately resolved and determined as in their opposition to an increase of salary. Nothing short of mandatory instructions from their constituents could overcome their heroism on this subject. He will not use the avenue line because he would be a dead-head. His money would remain in his pocket. "The love of money is the root of all evil," and he resorts to this delicate device to drop his salary along the highways as a contribution to the poor—the railroad companies in the land. His refined sensibility is wounded at the thought that his traveling colored companion, who pays, should see him riding free, and he scrupulously avoids giving offense to a brother. This is kind, it is noble, it is heroic and self-denying, it is the very essence of Christianity; and because it is the essence of Christianity, or a great moral idea, the advocates of social equality avoid the avenue line.

Thus we see that the prejudice is not peculiar to the democrats. It belongs to us all. It is nature, it is instinct, it is reason. But I will go one step further in this direction and then turn to another branch of this subject. Let us suppose a case. And without doing violence to the hypothesis, we will suppose that after some champion of this bill to establish social equality has by his vote conferred upon his poor white constituents the honor of free association in schools with negroes, those constituents should meet in convention and resolve, that they have taxed his patriotism long enough and will not impose upon him the burden of serving them in Congress any longer, but will permit him to take rest in the bosom of his family and among his colored associates, even against his earnest protest that he is willing to sacrifice himself further in their behalf. Fortune meantime deserts him and he becomes poor—for even a congressman, after his term is ended, may become poor—and from necessity, has sent his daughter to a mixed school. When she attains sweet sixteen a young gentleman of African descent, of untainted blood, who can trace it back in its ethnological purity as far as Noah and the flood—educated and refined, exquisite in dress as Beau Brummell, as worthy to lead the fashion as Beau Nash, wealthy as a moiety contract, a custom-house ring or District ring can make him, and appreciating the ad-

vantages of civil rights, calls to ask of that ex-champion of social rights the honor of his daughter's hand. Does any one doubt from which extremity of that ex-champion the instant reply would come—whether from his head or his heel? He would not reply categorically; but with a few vigorous utterances, not strictly canonical, he would impinge on that astonished Adonis with both ends in action like a supple-jack and battering-ram combined.

But, turning, he finds his sweet sixteen in spasms, and on inquiry for the cause, he hears a tale that makes him cry with old Brabantio, "Who would be a father?" She tells that doting father, that civil-rights advocate, that political trader, who in trying to buy the negro vote cheap has sold his daughter dearly, that the ejected gentleman is her affianced lover; that she has doted on him from her youth up; that in the same school where her philanthropic father placed her at ten, close at her side sat, day by day, for years, that idol of her heart; that her first lessons in Peter Parley and Ovid's Art of Love rippled in melodious accent from his angelic lips—

> "O, it came o'er my ear like the sweet south,
> That breathes upon a bank of violets,
> Stealing, and giving odor"—

that when to the theater and to church she went, the Apollo of her bosom followed and took a seat near by, and thus and thus he had won her heart.

And finally, in love's rhapsody and with Cassandra's inspiration, she forewarns him that her life, like his political party, must be a failure, and, like Ophelia's, end in "muddy death," unless he will bless the bans, and after death lay herself and darling side by side in the same grave-yard beneath a damask rose and a lovely black-jack—or *quercus nigra*—as emblems of their homogeneous union, and chosen by his poetic soul as the happiest type of civil rights. [Laughter.]

Let us pause for a moment and consider whether this advocate for civil rights would thus act. If there be one who would not, let him avow the fact. If any white man would under any circumstances consent to such an alliance by a member of his family, let him declare it and put himself in Coventry. If he would not, the conduct of the champion is true to nature. But would it be logical from his standpoint? He denies that he has any prejudice to the negro race! Then why not intermarry with them? He has no feeling of hostility! Then, all other things being equal, why oppose his marrying a relative? The question admits of but one answer, and that is the answer that God has put in the mouth of every white man since he created man in his diversity. That answer is, it is repugnant; it is loathsome; it is unnatural. The feeling, the prejudice, the repugnance is universal. Such an alliance is unnatural; and what is unnatural is forbidden, and what is forbidden is unlawful. I say this prejudice

is universal. Climes do not change it. Education does not subdue it. Christianity does not abate it. Civilization but intensifies it, and science has demonstrated its wisdom and its benefit to the physical, intellectual, and moral power and greatness of the white race. It had its birth at creation, has survived the ages, the graves of empires, the subjugation of races, and will ever live and perish only with the last expiring man. The question of its universal existence no more admits of doubt or argument than the proposition that black is not white, or that the races are distinct.

But it is said, "Admit it, then what of it? We do not mean that blacks and whites shall marry." Well, if you do not, then be consistent, be logical. Let precept and example be in harmony. If you would not marry them, then coerce no conditions in life among the poor, who cannot protect themselves, by which you increase the danger of such relation. You would not encourage marriage between the two races, but you compel them to associate in every *social* condition. You tell your child not to gamble, but that he must associate with gamblers. You tell him not to drink, but he must affiliate with drunkards. You instruct him not to lie, but chain him neck to neck with liars. You caution him not to make companions of negroes—not to marry one—but you tie him side by side in the tenderest age of life with negroes. And thus you tell him the negro is as good as he. You make them playmates, partakers of common joys and sorrows, associates at school, associates in pleasure, associates in church, in public conveyances, at meals, when traveling, and lay them away to sleep their last sleep side by side. Every act is a declaration of social equality, and every word is a denial of your acts.

How such a father shall at the lips of his own child escape the condemnation pronounced against the hypocrite will turn on either his being a greater hypocrite or the preferable alternative of his being a natural fool.

Woe be unto the political party which shall declare to the toiling yeoman, the honest laboring poor of this country, "Your children are no better than a negro's. If you think so, you shall not practice on that opinion. We are the rulers; you are the servants! We know what is best for you and your children. We, the millionaires—we who are paid out of your pockets, will take your money and will send our children to select high schools, to foreign lands, where no negroes are; but you, you who are too poor to pay, shall send your ragged, hungry urchins to the common schools on such terms as we dictate, or keep them away to stray among the treacherous quicksands and shoals of life; to wander on the streets and learn to syllable the alphabet of vice and crime, or stay at home and, like blind Samson, in mental darkness, tramp, barefoot, the tread-mill of unceasing toil."

To constrain the traveling public to distasteful situations; to com-

pel the pleasure-seeker to stay at home or submit to annoyance greater than the pleasure; to make a battle-ground of public schools, or drive the poor away from their doors—these iniquities are not enough for the republican party. They must take one step more; they must torture the living by stepping into the graves and disturbing the rest of their cherished dead. They say to the poor man whose departed loved ones must be buried in the public cemetery, and may be at the public cost, "Bury your dead where we say, or throw them out in the potter's field like dogs; bury your wife, your child, side by side with the negro, or any one we name." And if in time the bloody scythe of Death has filled the ground until, in files, the sleeping soldiers of the Cross lie elbow touching elbow, and the files must be now doubled, you command the sexton to open the grave of the poor man's wife or child and bury a negro there, though he died by the hangman's rope for a crime that should debar him Christian burial, or he shall forfeit his money to the villain's kin and waste in a prison cell.

If I have thus far treated this subject with too great solemnity, may I not indulge the hope that the Senate will extend to me its charity, at least until I may be heard? One less reverential might deport himself in the presence of this dignified question with some degree of levity. Far be that from me. But when a few days ago the Senator from New Jersey [Mr. FRELINGHUYSEN] solemnly rose and as solemnly announced that this interesting nuptial ceremony was temporarily postponed, because one was absent who desired to participate in the joy of the occasion, I felt funereal, because the Senator looked funereal. It is natural to some men to feel funereal, and it is natural to some men to look funereal. And if I have thus felt and spoken on this momentous occasion, were it deemed necessary or even conventionally appropriate to offer any suggestion by way of extenuation, I could only point to a temperament somber enough indeed by nature, but greatly heightened in lugubrious tone by the colors of the dark and gloomy subject which has for several years commanded and received our profoundest consideration and respect.

For, sir, we are engaged in determining a question of the greatest moment to the American people.

The great question is how we shall maintain "equality before the law," or, expressed in equivalent terms, how the republican party can get the negro vote and thus be saved. Upon the correct solution of this political conundrum may turn the destiny of this and all republics. Happily for this generation and the fate of unborn millions—the genius of the republican party, hitherto equal to every undertaking which could work disaster to the country, has not been found wanting in grand conception to lift from the gloomy future its Cimmerian veil. Light breaks in upon us, and torturing shadows flee

away. The whole country breathed with freedom and delight on hearing it announced, through the report made by the Senator from New Jersey, that the Senate Judiciary Committee, after a laborious and anxious session extending over several months, had solved the most perplexing national embarrassment of this or any other age, by the eminently wise and profound conclusion that the easiest, most dignified, and patriotic measure which they can devise is, that Congress shall enter, without delay, upon a general cemetery and hotel business.

Sir, I shall not commit the folly of entering upon any extended argument in the vain hope of adding anything in support of the able report of that committee; nor will I perform a work of supererogation by enumerating the inestimable blessings to flow in perennial stream to the American people, if the republican party, or even the dominant majority of the present Congress, should resolve on establishing a cemetery, even though, as with everything else within their reach in the United States, they should appropiate the advantages and enjoyment of that peaceful institution exclusively to their own use. Such an act would be so singularly patriotic, and so signalized as their only peaceful step, that it would be hailed with unanimous acclaim by an indignant but grateful people.

It requires but a casual reference to the report of the committee to show that my encomium on that production is but too tame and feeble. The Judiciary Committee have discovered what Christians and pagans in all ages have vainly sought to know. Their labor for months has not been in vain. They have penetrated the veil, have held converse with dwellers in the mystic land—but not with that host of republicans which no man can number, who are wandering on the Stygian shore without obuli, and unable to cross, because Charon refuses to take their irredeemable currency—and have returned to earth with the joyful tidings that there is happiness in the grave. They tell us in their report that there is such a bliss as "enjoyment of a cemetery," and with a broad philanthropy never known to man before, they have declared their unselfish desire, most felicitously expressed by themselves, (as I quote,) that "all persons within the jurisdiction of the United States shall be entitled to the full and equal *enjoyment* of the accommodations, advantages, facilities, and privileges of *cemeteries*." [Laughter.]

It may be that this discovery is not original with the Judiciary Committee of the United States Senate. It may be that suicides, (and by this word I mean not to intimate the fate of the republican party,) finding no happiness in this life, are given a glimpse of the joy to be found in a cemetery, and philosophically rush to its embrace. But it is only just to the Judiciary Committee that I should state, they tell us there is joy only in a cemetery "supported by general

taxation." What joy there is in anything in this world, or out of it, that springs from general taxation, puzzled my understanding before I read the report of the Judiciary Committee. Had I been left to my unguided reason to learn why there is enjoyment in a public cemetery and none in solitary burial, with the provisions and aims of this bill before me, I would have supposed it is, because in one we would have "the full and equal privilege" of colored society, while in the other we should lie "in cold obstruction" and in cheerless solitude.

But, happy committee, who have made the comforting discovery that there is one spot on this sad earth where general taxation brings joy to its inhabitants! And happier, still, should be the American people, as, under republican rule, they are enjoying more "general taxation" than any people on the face of the globe. What joy has not that party in reserve for us? They have given us the joy of reconstruction—the joy of Holden, of Scott, of Bullock, of Reed, of Smith, of Ames, of Warmoth, and Kellogg, and, greater than all, of Durell; the joy of ten States burdened with irredeemable debt; the joy of one State politically dead; the joy of another under acknowledged despotism; the joy of a third in the throes of interneeine war; the joy of an irredeemable paper currency; the joy of financial disaster; the joy of ceaseless investigation of their public officers; the joy of innumerable "rings" whose radii reach every nook in the land where a copper can be stolen; the joy of taxation by wholesale and by detail; the joy of negro dominion and white subjection; and now they propose to honor us with "equal and full association" with negroes, and to give us as a final bequest, to be enjoyed after death, the "*enjoyment* of a *cemetery!*"

The history of the party itself is a demonstration that it needs a cemetery. Argument would but weaken the conclusion. The people see it. They have long felt it. A dozen or twenty States stand willing and eager to donate liberally their ground. Indeed, sir, the people themselves, in proportion as they are zealous for the public good and have been watching the movements of that philanthropic party and school of statesmen in their concentric and eccentric "rings," have been, in like degree, generously moved, themselves, to inaugurate this mortuary enterprise. They have determined, that these statesmen, white and black, who have signalized themselves by such distinguished service—a service, sir, in which they have made a voluntary sacrifice of everything except themselves—shall by the coming of the grand centennial celebration of our nation's birth, find "free and equal accommodation" in the hospitable chambers of a retired sepulchral home, "without distinction of race, color, or previous condition of servitude," where they may "rest from their labors," and enjoy, in eternal seclusion, the earnest prayer of every patriot, that "their works do follow them."

These republican statesmen have heard the sentence pronounced upon them by the people, the tribunal of last resort, and they know it will be carried into execution as surely as the day appointed shall come. But the Judiciary Committee, with that repugnance to being buried alive so natural to all politicians, have reported this cunningly devised measure for the purpose of avoiding the sentence. This bill, to bury negroes and whites together, is but an indirect and covert attempt to drive the people to adopt the system of cremation. The committee, however, need not be alarmed as to the method by which their party will be taken off. The people care little or nothing for the manner of their departure. All they desire is, that they will not "stand on the order of their going, but go at once." Whether they complete the work of suicide which they have been slowly committing for nine years past, or whether they wait to be buried alive, or to take their first upward tendency and flight in the fumes and ashes of cremation, is with the people a matter of trifling moment. And I think I may safely say, speaking as one of the people, that on petition to them by a delegation or two of the money-kings of Boston and New York, whose influence seems to be more potent with the American throne of grace than the expressed will of the laboring masses, the people would kindly reduce the judgment passed to bury the republican party alive to that of incremation.

The question is, how shall we save the republican party? But the answer to the question, I confess very frankly, passes my understanding. It involves too much erudition in surgery, therapeutics, antiseptics, and prophylactics, for my limited store of learning. When the President sinks back in despair before its impossible solution, the case may be considered without remedy. He was deeply and painfully impressed with the necessity for immediate and omnipotent help, and after most thoughtful deliberation concluded, there was but one remedy, one hope—and that was by unloading. He commenced, but finding, even if he could finish the work within his natural life, that at the end, there would be nothing left of his party but the cart, mule, and negro driver—the only innocent things he could find about it—he stopped, ordered up the tail-board, and is now driving heroically on to the chasm.

An earthquake produced an abyss in the forum of Rome, which her citizens endeavored in vain to fill. A noble youth who had endeared himself to his country by many deeds of valor, hearing that the abyss, which threatened the destruction of Rome, could never be closed without a sacrifice of human life, clad himself in full armor, mounted his charger, and leaped into the chasm, which closed, and his country was saved.

Between the two sections of this Union the thunderbolts of war have made a deep and bloody chasm. The good and true patriots

have vainly tried, for ten years past, to close it up. The evil genius of the republican party has thwarted every attempt. But the country has found, at last, a Curtius in the hero of the Northern Army. That leader has performed many martial acts for which he is cherished in the hearts of the majority of his countrymen. But his patriotism never shone with such effulgence as at this moment, when we behold him with closed eyes and clenched teeth, driving his cart loaded with his party and the bondholders recently mounted behind, full tilt into that bloody chasm to save his country from destruction. The desperation of the imminent leap would excite enthusiastic admiration, did we not know, that the tragic performance is of necessity and not of choice. The blending in one red burial of party and cart, negro and mule, would make every patriot sad, but for the pleasing consciousness, that their loss will be their country's gain. And when we remember how luxuriously they have lived, reveling in purple and marble halls, and spending in lavish waste the profusion of a nation's wealth, our pity might be aroused that those, who have so much to make them cherish and cling to life, will so soon and forever pass out of view, did we not know that they will go full-handed, and will leave nothing behind but a bankrupt estate, and creditors divided in feeling between indignation at the loss of their debts and joy at riddance of the debtor.

It is also equally clear that Congress should without delay enter upon the enterprise of keeping a hotel. The power of Congress to keep a hotel is plainly given in and by the words "to promote the general welfare;" or may be drawn from the Declaration of Independence; or the preamble to the Constitution so often cited in support of propositions equally as clear as this, by the honorable Senator from New Jersey.

Peace and order are necessary to the general welfare. And without consuming time in demonstrating, exegetically or pathologically, the far-reaching influence of gastronomic equilibrium, I may rest content, in this enlightened presence, with a statement of the general proposition, that no plan more philosophical, humane, and patriotic than the one recommended by our Judiciary Committee, could possibly have been devised for the purpose of preventing sectional rebellion and civil war. For history, which is but a panorama of arms and human gore, does not contain one single well-authenticated instance of a people rising from a full and hearty meal, and rushing, prior to digestion, into insurrection.

But still more salutary will be this wise enactment, because without it absolute "equality before the law" cannot be maintained.

The objective aim of this republican statesmanship is at the rebellious spirit of the keepers of hotels in all America. It is to guaranty abdominal equality to all guests, black and white. To do this, Con-

gress itself must act in carrying out the law. This is a body of delegated powers. *Potestas delegata, non potest delegari.* The power of Congress to keep a hotel being a special delegated power, we cannot delegate that power to another. It will be necessary, therefore, to organize a special committee, which, without intending to infringe upon the prerogatives, which, in this great work, belong exclusively to the Judiciary Committee, I, with all deference, suggest, might be called "The United States Grand Eclectic, Peripatetic, Special Committee on Education, Grave-yards, and Hotels." [Laughter.] From this grand committee a sub-committee can be appointed, to be called the dining-room committee, to be adorned with white aprons, white cravats, and roundabouts; to be armed with stomach-pumps; and having their hair parted in the middle, to signify their high justiciary office and commission to make an equal victualary division to both whites and blacks, and thus "to establish justice and insure domestic tranquillity." They must superintend the seating of the guests; first a black, then a white, like spots on a checker-board, and take their stand as vestal virgins behind the chairs of the colored guests. And to insure "full and equal accommodation to all," (in the felicitous language of the committee,) whenever Java coffee and loaf sugar, linen napkins, ivory-handled knives and silver forks, boned turkey, and hams, with champagne sauce, be given to the whites, this vigilant committee must see to it, that bean coffee and brown sugar, cotton napkins, buck-handled knives and two-tine forks, bacon and greens, rancid butter and ancient eggs, are not given to the blacks. [Great laughter on the floor and in the galleries, with indications of applause.]

The PRESIDENT *pro tempore.* Applause is out of order, and if it be repeated in the galleries the Chair will order them to be cleared.

Mr. NORWOOD. And if at any time after the guests are seated, and the committee have inquired if all are ready, and the chairman has given the word "Go," they should detect any voracious white rebel disregarding the will of the republican party and the majesty of this law, and attempting to evade its equitable and just intent by smuggling in more than his share, the sub-committee should promptly warn him of their high mission to enforce "equal and full accommodation" in that hotel; and that unless he desist, "equality before the law" will be maintained by active and exhaustive use of a stomach-pump, enforced, in case of resistance, by the *posse comitatus* of the Army and Navy of the United States. And while I would do nothing to arouse a feeling of jealousy growing out of personal ambition for priority or precedence in the organization of this sub-committee, I would merely suggest, that the Judiciary Committe, who have given the details of this intricate and delicate enterprise most careful consideration, and no doubt sent for persons and papers, should be presumed to possess more accurate knowledge on this gustatory service than any other members of the Senate.

The Judiciary Committee have also wisely concluded that Congress shall keep a school, or rather many schools. The power of Congress to regulate the public schools is found in the grant of power to declare war. The power to declare war is unlimited. Congress can declare war with or without cause. It may make war as well against friends as foes. In support of this proposition I have only to cite its course foward the southern people for the past eight years. This being true, Congress can unquestionably declare war between white children and black children in the public schools. I maintain further that it can, thereafter, declare war among the parents, white and black, of those innocent, little children. I advance a step still beyond. I maintain that as the power to make war necessarily carries with it the power to destroy, Congress can go further and even destroy the public schools! In support of these conclusions I plant myself, with confidence, upon the report of the Judiciary Committee of the Senate.

That Congress should go into the school business is even still more clear. No constitutional lawyer at least will hesitate to give his hearty assent. I am proud to say, that on this one branch of the committee's report, the whole people of the United States are agreed with a unanimity never surpassed, and only equaled by the vote of the Pickwick club, that Mr. Pickwick might travel and pay his own expenses.

Yes, Mr. President; let Congress establish and regulate at least one public school, and let it be opened in this high Chamber. Let the first text-book in the curriculum be the Constitution of our country. After that, let us study the mysteries of the volume of humanity. Its lessons we can better learn by looking inward, for they are written on the tablets of our hearts, more enduring than stone, and as truthful and unchanging as the decalogue. We can next turn to history and learn the philosophy of its teachings. If its ponderous volume make us shrink from entering upon the labor of the search, we still can find extracted and in condensed form its richest treasures. Buckle, Mill, Comte, Huxley, Spencer, and a score of other masters, in the quiet of secluded life, far removed from the bias of party, the fever of political strife, from sectional hate, from selfishness, and the insidious motive to gain or retain power, have taught us the hygiene of government, whose laws we can no more disregard than we can violate with impunity a law of physics. And if there be one law whose truth is demonstrated, it is that legislation, wise or unwise, in all free popular governments, is the reflex of social order, of social progress or decay; and that social order or public opinion never can be created or controlled by coercive legislation.

Laws not founded on public will and favor either drop still-born, or being only irritating thorns, nature soon throws them off. No wise

statesman ever runs counter to well-defined popular feeling or opinion. He does not attempt to overcome it by compression from without, or by prisons and dungeons. He applies his remedy within. He moves on the fountain head, and saves himself the mortification of certain failure in attempting to dam up a never-ceasing stream that swells and rises and gathers power from obstruction. So will the republican party do if it act wisely. It is entering on the dangerous experiment, one which tyrants in church and state have tried without success, of forcing a people to change opinions. And though the contemplated law, I regret to say, is intended to be sectional in its operation, to bear and grate upon the South, still it makes war upon a feeling common to the white race of our common country. The late Senator from Massachusetts declared in his place in this Chamber that it exists in Massachusetts as strongly, though not so widely, as elsewhere in the Union.

Let us look for a moment at the existence and very gradual decline of this sentiment in the New England States.

Connecticut made a blow at the slave trade as early as 1774; patrolled free negroes, as if they were slaves, as late as 1797, and punished for educating "persons, not inhabitants of the State, of the African race" as late as 1833.

New Hampshire abolished slavery over eighty years ago. In 1815 she forbade by law the enrollment of negroes among her militia; and this law was retained on her statute-book till 1855.

Rhode Island abolished slavery in 1784, but as late as 1844 her people expressed their prejudice against the negro in terms not to be misunderstood. It was by solemn statute which forbade the joining in marriage any white person with any negro or mulatto, under penalty of $200, and making the children of such pretended marriage illegitimate.

And the last I shall notice is Massachusetts.

In 1705 Massachusetts forbade by statute the marriage of whites with negroes or mulattoes, punishing the ministers or officers officiating, by fine of $250, declaring the marriage null and void, and degrading the issue by fixing on them the stain of illegitimacy. The title to that act is singularly suggestive to us now. It read, "An act for the better preventing of a spurious and mixed issue," and contained these words:

"If any negro or mulatto shall *presume* to smite or strike any person of the English or other Christain nation, such negro or mulatto shall be severely whipped," &c.

This law, in a careful revision of her code, was solemnly re-enacted in 1836. And Chancellor Kent asserts that, as late as 1848, in no part of the country except in Maine, did the African race, in point of fact, participate equally with the whites in the exercise of civil and political rights.

If New England with all her philosophy, with all her Christian charity, and with so very few of the black subjects on whom to bestow that abounding charity, and without any irritating obstruction, has not been able to overcome her prejudice in more than half a century, how does she expect us of the South, goaded and embittered as we have been by strife continually aroused between whites and blacks by intermeddling carpet-baggers and hostile congressional legislation, to subdue our life-long antipathy to social equality among the races?

"Thou hypocrite, first cast out the beam out of thine own eye; and then shalt thou see clearly to cast out the mote out of thy brother's eye." Unless you do, "your righteousness shall not exceed the righteousness of the scribes and pharisees."

The injustice of this bill is manifest and gross. Owners and lessees of hotels, railroads, and so on, are to be punished only because they act in obedience to public sentiment; because they respect a feeling common to republicans and democrats. Whether their guests be black or white would not give hotel-keepers a moment's thought if public sentiment were different. But they know that no hotel could maintain itself, which should throw open its doors to blacks as well as whites. Yet these men who are guilty of no offense, but are merely carrying out the universal sentiment of the American white race, are to be made the victims and suffer, vicariously, for what the public do. This cruelty would be a refinement on that of the wolf, which devoured the lamb for what the wolf himself had done. For republicans and democrats both, by refusing to patronize hotels where negroes are received on equality, compel the proprietors to exclude the blacks, and now the republicans propose to punish such proprietors for complying with this general demand of the traveling public.

I shall now consider this question in the light of the Constitution, and inquire whether such legislation be warranted by that once sacred instrument.

Mr. Justice Swayne, in deciding a case which arose in Kentucky under the thirteenth amendment to the Constitution, (reported in 1 Abbott Circuit Court Reports, page 44,) used the following words:

"What is unwarranted or forbidden by the Constitution can no more be done in one way than in another. The authority of the national Government is limited, though supreme in the sphere of its operation. *As compared with the State governments, the subjects upon which it operates are few in number. Its objects are all national.* It is one wholly of delegated powers, and * * * *whenever an act of that Government is challenged, a grant of power must be shown or the act is void.*"

These words announce no new construction, but they are valuable as emanating from a judge generally believed to be latitudinal in his opinions of the extent of Federal power, and as one of the three justices who dissented from the opinion of the majority in the cases from Louisiana commonly called the Slaughter-house cases.

The power of Congress to pass this bill must be shown by those who advocate its passage. It is not pretended that Congress, prior to the adoption of the last three amendments, had the power to enact such a law; nor is it claimed that any but the fourteenth amendment confers such power. On this amendment the supporters of the measure rest the case. It reads:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
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> SEC. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

To determine this question it is necessary to understand clearly—

First. What are the privileges and immunities that belong to a citizen of a State, as such citizen?

Second. What are the privileges and immunities of a citizen of the United States, as such citizen?

A correct analysis of these respective classes of privileges and immunities must show to which class the rights or privileges and immunities to be enforced by this bill belong, and that result must necessarily determine the question as to whether they are the proper subject of congressional control.

There was a time when there was no other citizenship than that of a State. That time was between the 4th day of July, 1776, and the 17th day of September, 1787. This proposition no one will deny. It is equally clear that between those dates there were no privileges and immunities other than those conferred by and derived from citizenship of a State.

Before the Constitution was adopted, citizenship of a State was an entirety. A citizen of New York, or Georgia, owed allegiance to but one government. That government was his State. He could look to but one power on earth for protection. That power was his own State. From that State he derived and enjoyed every kind of privilege and immunity which could belong to him as a citizen. But the privileges and immunities which he possessed were only such as were bestowed by the law of his State. Hence the privileges and immunities of the citizens of the several thirteen States varied, and none were exactly alike unless their laws were the same. And this important fact was wisely considered by our fathers in framing the Federal Constitution. They foresaw that the full benefits had in view and to flow from the Union of the States could not be realized unless the advantages of citizenship in each State should be open to

participation by the citizens of the other States. Hence they inserted the second section of the fourth article of the Constitution, that—

The citizens of each State—

Not the citizens of the United States—

shall be entitled to all privileges and immunities of citizens in the several States.

Now, what were and are the privileges and immunities referred to here? They are clearly such and only such as each State could and might confer on her own citizens. And what were they? They were such as belonged to the citizen of each State before that State became a member of the Union under the name of the United States. They were such as the organic and statute law of that State allowed, or might afterward allow—no more, no less—and had Georgia not changed her constitution or her laws from 1787 to this time, the privileges and immunities of a citizen of that State would be to-day just what they were then. To attempt to enumerate them would be worse than folly. It would be an attempt to state every right which a citizen of a free government enjoys. It would be to designate every benefit which is derived from Magna Charta, the Bill of Rights, the common law, and the statute law.

Mr. Justice Washington in Corfield *vs.* Coryell, 4 Washington's Circuit Court Reports, answered the question, "What are the privileges and immunities of a citizen of a State?" by a statement whose generality shows that his mind shrunk instinctively from the impracticable labor of enumeration, but whose comprehensiveness is so just that from the day of its utterance to the delivery of the decision in the Slaughter-house cases, no court has attempted a correction, and all judges, who have had the question under consideration, have adopted it as their own definition. He said:

We feel no hesitation in confining these expressions to those privileges and immunities which are, in their nature, fundamental; which belong of right to citizens of all free governments, and which have at all times been enjoyed by the citizens of the several States which compose the 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."

Such is his language, and the Supreme Court of the United States *including the three justices who dissent,* approve the definition. And just here I will make a remark that it will be well to bear in mind as we proceed. It is this: I take it as granted, without argument, that no one, lawyer or layman, will deny that every privilege named in this bill before the adoption of the fourteenth amendment, was derived by those who enjoyed them exclusively from the States of which they

were citizens. To keep a public inn; to bury the dead; to construct and manage railroads and other modes of conveyance; to open and manage a theater, are privileges conferred by each State. They belonged to the citizen of each State before the Union was formed; they have been granted by the States ever since the Union was formed. They have been regulated, modified, enlarged, given, and taken away by the States exclusively.

Having advanced thus far, it may be assumed as incontrovertible that all the privileges and immunities enjoyed by citizens of a State at the time the Constitution was adopted, except as modified by State statute, remain as his possession, or as the heritage of his children under the State, unless it can be shown affirmatively, that they have been taken away or modified by the Federal Constitution. If the Federal Government claims that any of these rights have been surrendered to its control, the affirmative must be shown by express grant in the Constitution. If it assumes control over any one of these privileges, on being "challenged," in the language of Justice Swayne, t must give the pass-word—it must show written authority.

Let us ascertain whether and to what extent, if any, the control or protection of the privileges and immunities of citizens of a State were transferred to the Federal Government.

We have already seen that the citizenship of a State was not entirely changed, if at all, to that of the United States on the adoption of the Federal Constitution. We have also seen that the great fundamental privileges and immunities of citizens of the respective States remained under exclusive control of the States after the Union was formed, unless it shall appear that in express terms their control was transferred to the United States Government.

I repeat, that citizenship is an entirety. No one can be a citizen of two independent governments which are absolutely sovereign. Citizenship necessarily implies allegiance and obedience. It necessarily implies protection. If the government be absolute and in every essential sovereign, the control over its citizens and subjects must be equally unlimited. But should the government be not absolute and sovereign, but limited and qualified, its control over its citizens and subjects must also be limited to its qualified authority. If it be established to accomplish certain, special, designated objects and no others, its control over the life, liberty, and property of the citizen must be limited to a control which is necessary to accomplish those objects. And should there be any privileges and immunities, any rights or freedom of the citizen, whose control is not necessary to the accomplishment of those objects, the government thus limited cannot exercise control or jurisdiction over those rights and privileges. To illustrate: if the Federal Government had not power to declare war, levy taxes, or regulate commerce, it could not control the citi-

zen's person for the Army or Navy, nor his money, nor his produce; and these would clearly remain under State control.

It would really seem unnecessary to go further than this to show the utter absurdity of the proposition contained in this bill. The objects of the Federal Government, says Mr. Justice Swayne, "are all national." "The subjects upon which it operates are *few in number.*" Is it a *national* object to regulate theaters, hotels, cemeteries? Is it a *national* object to see that a negro shall sit in the same coach with a white man? Is it a *national* object to provide that a negro shall sit at the same table with a diplomat on a Potomac River steamboat? Is it a *national* object to regulate manners or to control prejudices?

But, again, Mr. Justice Swayne truly says that the subjects upon which this Government operates are *few* in number compared with those under State authority. If Congress shall regulate the management of theaters, cemeteries, hotels, pray tell me what is there on earth, within the States, that Congress cannot regulate? Where is the limit? Can it not regulate fairs, circuses, hippodromes, menageries, and organ-grinders? The Judiciary Committee must believe that Congress has this power, because they report in favor of regulating theaters and other places of public amusement.

Without levity or jest I state it as a legal proposition, that if Congress can protect the citizens of the United States in the manner here proposed, it can protect them in the enjoyment of every general privilege and immunity known to an American citizen, whether it be derived from citizenship in a State or of the General Government. More than this, Congress can punish for interference with any general privilege or immunity of a citizen by any person, no matter whence that privilege or immunity be derived. And if this can be done, then this result logically and inevitably follows: that the assumption of jurisdiction to protect these rights of a citizen necessarily ousts the jurisdiction of every State over the same subject-matter. By the Federal Constitution, since the adoption of the fourteenth amendment it is one of the immunities of every American citizen that he should not twice be put in jeopardy of life and limb. And when the Federal Government assumes jurisdiction of any cause, civil or criminal, the State cannot act, and an offender once punished by a Federal court cannot, for the same offense, be punished by a State court. A power delegated to Congress is not reserved to any State. *E converso*, every power is reserved except those expressly delegated. A State may exercise certain powers which are delegated to the General Government, but only so long as Congress declines or refuses to exercise the power. A State may establish rules of bankruptcy if Congress remain silent. But when Congress establishes a rule of bankruptcy, the State law is instantly made inoperative. But Congress has no jurisdiction over

subjects such as these named in this bill, unless it can be shown that the privileges and immunities referred to by the fourteenth amendment include those general privileges and immunities which a citizen of a State possesses.

But I will resume the direct line of argument I was pursuing.

Whether the citizen of a State, before the fourteenth amendment, was also a citizen of the United States is not essential to a correct and clear solution of this question. For if a dual citizenship did exist, it is clear from conclusions already arrived at, that neither could in the nature of things be an absolute entirety. As before remarked, no man can owe entire allegiance to two sovereigns. No American citizen could owe undivided obedience to, and claim every protection which belongs to a citizen or subject from, two distinct governments at one and the same time. If there is a dual citizenship, the obedience due to either, and the protection guaranteed in return by either government, must necessarily depend on the nature and extent of the respective governments. If the control of either government is restricted by limitations, the protection afforded to its citizens must necessarily be limited in like manner and to the same extent. If one be permitted to exercise only certain delegated powers, the control over the citizen by the other must be the complement of the whole power of the two. This brings us to a point at which we can see the conclusion, which, it seems to me, is logically inevitable. And to arrive at it, it is only necessary to analyze the Constitution of the United States to find what rights are therein guaranteed, and thus determine the second inquiry, to wit: What are the privileges and immunities of a citizen of the United States as distinguished from those of a citizen of a State?

To my mind they are as separate and distinct as is the government of a State from that of the United States. They are so well defined that a child can learn by rote and designate on its fingers the privileges and immunities of a citizen of the United States. It seems to me, that no case can arise in which any man can be at a loss to tell in a moment whether redress for violation of any privilege or immunity must be sought in a State or a Federal court; for the conclusion to which I arrive is, that all the privileges and immunities of a citizen of the United States are designated and named in and derived exclusively from the Constitution of the United States.

Before I proceed in further consideration of this proposition, let me briefly recapitulate

The privileges and immunities of citizens of the original thirteen States were, prior to the Federal Union, such as they possessed under their own State, and were, therefore, subject to the exclusive control of the States respectively. When the Union was formed, the priv-

ileges and immunities of the citizen remained the same, except that a few others were conferred by the formation of the Union. Those privileges and immunities (excepting the few thus added) still remained under State control, except a few which were confided to the General Government. But the regulation of any rights of the citizen by the General Government was restricted in proportion as that Government was itself limited in its authority. The authority given to the General Government was strictly and expressly limited; and it could exercise no control over the *life, liberty,* or *property* of a citizen of any State, or *of a citizen of the United States,* (if such citizenship existed prior to the fourteenth amendment,) except for certain enumerated purposes.

But to resume. I say the privileges and immunities of a citizen of the United States are distinctly designated in and derived from the Constitution. Let us examine this proposition closely—test its strength; for on its soundness depends the safety of our dual, complex government and the existence and perpetuity of State-rights, unless the people of the States grow alarmed at the dangerous power conferred by the fourteenth amendment and tear it from the Constitution.

The Supreme Court, including the three dissenting justices, say in the Slaughter-house cases that the fourteenth amendment declares, if it does not create, a citizenship of the United States separate from that of a State. The necessary sequence to this proposition is, that there must be privileges and immunities of a citizen of the United States different from those which belong to a citizen of a State. For if there be two citizenships, there must be also two classes of duties and obligations imposed on the citizens of the respective governments. There must be also different laws under the two governments, as otherwise there would be two governments enforcing the same laws, to the same extent, for the same purposes, and against or for the benefit of the same persons; for the citizens of the States are now the same persons as citizens of the United States. This would evidently be not only an absurdity, but would, in effect, make the two governments one. But the governments being separate and distinct, the objects of either being separate and different, the powers of one being the complement of the powers of the other, and these powers being different, it must also follow that the privileges and immunities of a citizen of the State, which are but the result of the laws of the State, must be different from his privileges and immunities as a citizen of the United States, which are the result of the Constitution and laws pursuant thereto. And it must also be true, *that the protection of the privileges and immunities derived from citizenship must be given by the government from which they are derived; for it would be manifestly absurd to say, that the rights derived by a citizen from one government are*

under the protection of another. To show that this is true, we have only to ask, What are the privileges and immunities of a citizen of the United States who does not reside in any State? What are his rights as a resident in a Territory—in Colorado? It is clear that they are not those which a citizen of New York derives from citizenship in that State. Nor can he possess the privileges and immunities conferred by the local law of any State until he comes in person, or by interest, within the territorial jurisdiction of that State. He may avail himself of some of the privileges and immunities enjoyed by a citizen of a State, but this must be done within the limits of that State. The local law in New York which confers benefits on her own citizens does not extend to and protect and benefit him as a resident of Colorado.

Again, a citizen of New York may enjoy certain privileges under her local law in that State which citizens of other States do not. New York may prohibit the traffic in spirituous liquors, while the citizens of New Jersey may sell them without restraint. New York might enact that the right to vote shall depend on a certain degree of education, while in the Territory suffrage might be unrestricted. But the resident of Colorado, if native or naturalized, is a citizen of the United States, and he has certain rights as a citizen. He cannot be said to possess the rights which flow from citizenship in any State, because he is not a citizen of any State. The rights referred to in the fourth article, second section, are not his. He has the right to go into any State and to have while there equal protection with every citizen of that State, but this right is only potential, to be exercised at will, and is but a single privilege at best. But he has other privileges and he has immunities which are something in possession, something he enjoys hourly, that go with him at every breath he draws. For instance, one right is protection to life, liberty, and property. But no State affords him this protection. He looks to some other government, and as a citizen of that government is entitled to its protection.

Now, it is clear that all citizens of the United States possess the same privileges and immunities. In their relation as citizens of the Federal Government, are not the rights of all citizens precisely the same? No one can deny it. Then, as we have seen that the rights of a citizen of the United States residing in a Territory are not the same as the rights of a citizen of the United States residing in a State, whence does the difference arise? It arises from the difference between citizenship of a State and citizenship of the United States. It comes from the difference between the two classes of rights which spring from those separate citizenships. The citizen of a Territory *may* have as many privileges and immunities as a citizen of a State, but he cannot derive them from, nor would they be under the control of, the same government. As a citizen of the United States residing in a Territory, Congress may confer on him very enlarged rights, but it would be done under the power of Congress to establish all needful

rules and regulations for the government of the Territories. But these rights he would not possess as either a citizen of a State or of the United States. He would acquire and enjoy them as a resident of the Territory under the laws Congress might adopt for its regulation, but an alien resident there might enjoy the same rights. His rights as a citizen of the United States would remain the same, and such as even Congress cannot impair. His right to bear arms, to freedom of religious opinion, freedom of speech, and all others enumerated in the Constitution would still remain indefeasibly his, whether he remained in the Territory or removed to a State.

And these and certain others are the privileges and immunities which belong to him in common with every citizen of the United States, and which no State can take away or abridge, and they are given and protected by the Constitution. For the Constitution is the charter of the United States. It is the be-all and end-all of that Government, and as all laws of the United States must be in conformity to the Constitution, it is literally true that no citizen of the United States, *as such*, can possibly possess a single privilege or immunity which does not flow directly from the Federal Constitution.

And here the privileges and immunities of a citizen of a State, and his privileges and immunities as a citizen of the United States, divide. His rights as a citizen of a State are general, full, almost numberless. They embrace all that free republican government can confer, and they are limited only by State laws, organic and statute. Those belonging to him as a citizen of the United States are special, few, and some of them are but a part of what he possessed as a citizen of a State before the General Government was formed. The one are as the Atlantic, broad, expansive, generous, free, unrestrained except by its own bounds. The other is like the Gulf Stream, originating in the Atlantic, flowing through the Atlantic, and ending in the Atlantic, narrow in its scope, confined within fixed limits, and contracting or expanding, only as the waters of its origin and its home will allow.

And now let us see what are these privileges and immunities of a citizen of the United States. A few of them were created by the formation of the Constitution; some were transferred from the State to the United States for protection and control; and, if I am correct, some were secured by the fourteenth amendment. All these are, of course, protected by the operation of the Constitution. Perhaps all the privileges and immunities of a citizen of a State, which were created by the Constitution, are the following:

Free transit through all the States; the right to reside in any State; to carry his property to any State; to acquire property in any State, and enjoy in any State all the privileges and immunities which the laws of that State confer on its own citizens; of access to the seat of the Federal Government; of access to all sea-ports and centers

of trade; to have the benefit of the public acts, records, and judicial proceedings of other States; riparian and littoral rights; immunity from *ex post facto* laws; from attainder; from laws impairing the obligation of contracts; from having anything but gold and silver coin made a tender in payment of debts by a State; from the laying by any State of imposts or duties on imports or exports except what may be absolutely necessary for executing its inspection laws; from the laying of any duty on tonnage by a State.

One of his privileges is protection from injury to person or property on the high seas and in foreign lands, but this protection was simply transferred from the State to the General Government. It was not created by the Constitution.

The following are most, if not all, the privileges and immunities of a citizen of the *United States:*

The right to the writ of *habeas corpus;* of peacable assembly and of petition; to the free exercise of religious belief; to freedom of speech; to a free press; to keep and bear arms; to life, liberty, and property until deprived thereof by due process of law; to trial in the State and district wherein the alleged crime shall have been committed; to a public and speedy trial; to be confronted with the witnesses against him; to compulsory process for attendance of his own witnesses; to have counsel on his trial; to be informed of the nature and cause of the accusation; to trial by jury; immunity from bill of attainder; from *expost facto* laws; from capitation or other direct tax, unless in proportion to the census; from tax or duty on articles exported from a State; from preference to the ports of any State over those of another by regulation of commerce or revenue; from paying duties on vessels bound to or from one State to another; from conviction of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court; from the establishment of any religion; from troops being quartered in his house in time of peace or in time of war, unless in a manner to be prescribed by law; from unreasonable searches and seizures; from trial for a capital or otherwise infamous crime unless on presentment or indictment of a grand jury; from being put twice in jeopardy of life or limb; from being compelled to testify against himself; from having his property taken for public use without just compensation; from excessive bail; from excessive fines; from cruel and unusual punishment; from the condition of slavery or involuntary servitude, except as a punishment; from being deprived the right to vote on account of race, color, or previous condition of servitude.

I do not assert that these are all the privileges and immunities of a citizen of the United States as distinguished from his rights as a citizen of a State, but I do say that any others, whether few or many, will be found enumerated in the Constitution of the United States. Before the fourteenth amendment was adopted the first class of privileges and

immunities enumerated above belonged to citizens of the States by operation of the Federal Constitution. Some were permanently secured to him by inhibition on the State, as, for instance, immunity from attainder, *ex post facto* laws, and impairing the obligation of contracts, while some were conferred by the Constitution, as transit through and residence in other States, protection to person and property in other States.

I wish to notice at this point, the construction placed on the fourteenth amendment by the three dissenting justices in the Slaughter-house cases, and by the Judiciary Committee of the Senate in their report on the petition of Susan B. Anthony and others for the right of suffrage, submitted to the Senate January 25, 1872.

On page 95, 16 Wallace, Mr. Justice Field, delivering the dissentient opinion, says:

The first clause of the fourteenth amendment changes this whole subject, and removes it from the region of discussion and doubt. It recognizes in express terms, if it does not create, citizens of the United States, and it makes their citizenship dependent upon the place of their birth, or the fact of their adoption, and not upon the Constitution or laws of any State or the condition of their ancestry. A citizen of a State is now only a citizen of the United States residing in that State. The fundamental rights, privileges, and immunities which belong to him as a free man and a free citizen now belong to him as a citizen of the United States, and are not dependent upon his citizenship of any State. The exercise of these rights and privileges, and the degree of enjoyment received from such exercise, are always more or less affected by the condition and the local institutions of the State, city, or town where he resides. They are thus affected in a State by the wisdom of its laws the ability of its officers, the efficiency of its magistrates, the education and morals of its people, and by many other considerations. This is a result which follows from the constitution of society, and can never be avoided, but in no other way can they be affected by the action of the State, or by the residence of the citizen therein. They do not derive their existence from its legislation, and cannot be destroyed by its power.

The amendment does not attempt to confer any *new privileges or immunities* upon citizens, or to enumerate or define those already existing. It assumes that there are such privileges and immunities which belong of right to citizens as such, and ordains that they shall not be abridged by State legislation. If this inhibition has no reference to privileges and immunities of this character, but only refers, as held by the majority of the court, in their opinion, to such privileges and immunities as were before its adoption specially designated in the Constitution, or necessarily implied as belonging to citizens of the United States, it was a vain and idle enactment, which accomplished nothing, and most unnecessarily excited Congress and the people on its passage. With privileges and immunities thus designated or implied no State could ever have interfered by its laws, and no new constitutional provision was required to inhibit such interference. The supremacy of the Constitution and the laws of the United States always controlled any State legislation of that character. But if the amendment refers to the natural and inalienable rights which belong to all citizens, the inhibition has a profound significance and consequence.

The Judiciary Committee say:

The clause of the fourteenth, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States," does not, in the opinion of the committee, refer to privileges and immunities of citizens

of the United States other than those privileges and immunities embraced in the original text of the Constitution, article 4, section 2. The fourteenth amendment, it is believed, did not add to the privileges or immunities before mentioned, but was deemed necessary for their enforcement as an express limitation upon the States. It had been judicially determined that the first eight articles of amendment of the Constitution were not limitations on the powers of the States, and it was apprehended that the same might be held of the provisions of the second section, fourth article.

The dissenting justices say:

The amendment (fourteenth) does not attempt to *confer any new* privileges and immunities upon citizens.

The committee say:

The fourteenth amendment, it is believed, *did not add* to the privileges or immunities before mentioned, (article 4, section 2,) but was deemed necessary for their enforcement as an express limitation upon the States.

The justices and committee are in accord in holding, that no *new* privileges and immunities were conferred by the fourteenth amendment.

Is this opinion that no new rights were conferred strictly true? In one sense it is; in another it is not. No new rights are enumerated; the amendment simply refers to existing rights, and in this sense no new privileges were conferred; nor has it taken away any rights. It has declared, simply, that certain existing rights should not be abridged by States, and nothing more.

But in another sense, and in the sense referred to by the dissenting justices and the committee, the fourteenth amendment, while not technically conferring new rights, has given additional protection to existing rights. And in this sense the fourteenth article is not only not "vain and idle," but is comprehensive and efficient, as I shall now endeavor to show.

The Supreme Court, in an unbroken series of decisions, has held that the first eleven amendments to the Constitution were limitations on the powers of the Federal Government. And, without referring to all the many cases, I will quote a paragraph from the decision in 3 Howard, (Permoli *vs.* First Municipality of New Orleans:)

The Constitution makes no provision for protecting the citizens of the respective States in their religious liberties; that is left to the State constitution and laws; nor is there any inhibition imposed by the Constitution of the United States in this respect on the States.

And so it has been held as to all of the first eight of those articles of amendment. Whether these decisions be a correct reading of the Constitution is not material; but one fact cannot be denied, which is, that these decisions were the law of the land. Being rendered by the Supreme Court, a supreme co-ordinate branch of the General Government, no power on earth, except itself, could change the law fixed by those decisions without first changing the Constitution.

In view of this law, how is it possible to maintain, that no *new* privileges or *immunities* were conferred by the fourteenth amendment? Before its adoption any State might have established a particular religion, or restricted freedom of speech and of the press, or the right to bear arms, compelled a prisoner to testify against himself, imposed excessive fines and bail, inflicted unusual and cruel punishment, and so on. A State could have deprived its citizens of any of the privileges and immunities contained in those eight articles, but the *Federal Government* could not. But can a State do so now? If not, why? If the fourteenth amendment did not confer *new* privileges and immunities on the citizens of the States as citizens of the United States, or, what is virtually the same, did not give additional guaranty of existing rights, what prevents a State now from forbidding him to bear arms, or from taking his property for public use without just compensation, or from doing any of the acts which the Federal Government cannot do because of the first eight amendments to the Constitution? The reason is, that the citizens of the States have *new guarantees* under the fourteenth amendment; and though new privileges were not thereby conferred, additional guaranties were. It matters not whether they were technically citizens of the United States before the adoption of the fourteenth article or were not. If they were, which is the stronger view for the dissenting justices and the Judiciary Committee, still they did not have these guaranties which they now possess. The Federal Government could not legally invade them; but what of that, if the State could? A citizen of a State could not be deprived of his property without just compensation by the Federal Government, but he could by another government, to wit, his State. As a citizen residing in Wisconsin he could not be made a witness against himself by the Federal Government, but by the State of Wisconsin he might. Even if there were citizens of the United States, in the proper sense of the word, citizens, before the fourteenth article, they did not have many, very many, immunities which that amendment has secured.

The people of the United States thereby laid upon the States the same inhibition which they laid seventy years ago on the United States. They by that article declared, "that we are henceforth citizens of the United States as well as of our respective States; we enjoy certain rights or privileges and immunities secured to us in and by the Constitution of the United States as against their power and interference; but some of them are at the mercy of the States by the law of the land, by the Constitution itself, and we therefore declare that these privileges and immunities shall not be taken away or abridged by any State." And the instant the fourteenth amendment became a part of the Constitution, every State was that moment disabled from making or enforcing any law which would deprive any citizen of a State of

the benefits enjoyed by citizens of the United States under the first eight amendments to the Federal Constitution. And as the first eight amendments were a prohibition on the General Government as to the privileges and immunities of the citizens of the States named in those amendments, so the fourteenth amendment was and is a prohibition on the States, forbidding them to abridge the same privileges and immunities. So that the citizens of the American Republic, without reference to State lines or national boundary, are entitled to enjoy every privilege and immunity which is named in the Constitution.

This construction makes the operation of the State and Federal Governments harmonious. No conflict of authority between the two governments can possibly occur with a pure and honest judiciary. It will be only necessary to look to the Constitution to determine if a privilege or immunity of a citizen of the United States is abridged by a State, and a tyro can answer the question.

The dissenting justices say, (page 96, already quoted,) "with the privileges and immunities thus designated or implied"—*i. e.*, in the Constitution—"*no State could ever have interfered* by its laws, and *no new constitutional provision was required to inhibit such interference.* The supremacy of the Constitution and the laws of the United States always controlled any State legislation of that character." And they therefore say, that if this was the object of the fourteenth amendment, "it was a vain and idle enactment which *accomplished nothing* and most unnecessarily excited Congress and the people on its passage."

This opinion, as I have shown, is at variance *in toto* with repeated decisions of the Supreme Court, that every privilege and immunity named in the first eight amendments to the Constitution were under control of the States. And their conclusion is so far from being correct, that the converse of their proposition is the acknowledged law. The States could have interfered. The Judiciary Committee in the report referred to above recognize this law, and to that extent disagree with the dissenting justices. And had the words "and no State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States" been omitted, while the amendment would not have been altogether "vain and idle," still the privileges and immunities which I have enumerated above, as those secured by the first eight amendments to the Constitution, would have been left subject to abridgment and even abrogation by the States.

I have said, that, if this be the true and correct construction of the fourteenth amendment, our complex system of government will still move on in harmony. But should the views of the dissenting justices and of the Judiciary Committee, and of those who favor this bill, be right, let us look at some of the consequences which will inevitably flow from that construction.

The first I shall call attention to is marked and startling. The justices say:

> A citizen of a State is now only a citizen of the United States residing in that State. The *fundamental rights, privileges, and immunities* which belong to him as a free man and a free citizen now belong to him as a *citizen of the United States*, and are *not dependent* upon his citizenship of any State.

The italics are my own. If this be true, what rights that are in any sense those of a free man and a free citizen can a man derive from a State? Not one. What government must protect him in the enjoyment of *every* right, privilege, and immunity which he can possibly have as a free man and a free citizen? *But one.* For it is clear that the government which confers entire, full citizenship, and confers with it certain rights and privileges, must also be the power to protect them. Therefore, every fundamental right of a citizen of a State (who, it is said, is only a citizen of the United States residing in that State) is under the protection of the United States Government. This is one of the inevitable consequences of the opinion of the three dissenting justices. But this is not all; it is not half. If this be law, then the fourteenth amendment has destroyed the government of every State in this Union. It has struck down the legislative power, paralyzed the executive arm, and swept the State judiciary, in its appellate authority, from the earth. Like Aaron's rod, this one article has swallowed up all others. Every decision from every appellate State court under this construction is now subject to review by the Supreme Court of the United States, whenever any fundamental right of a citizen may be involved. The right to life is fundamental. The right to liberty, to property, is fundamental. And when a citizen's life is in danger he has the right to appeal to the Supreme Court of the United States. When his liberty or property may be involved, the same right of appeal is his. The way is open from every *piepoudre* court of the hundred thousand in the States and Territories to this Capitol. More than this. If these rights are under Federal protection, whenever Congress sees fit to exercise the power for their protection, the authority of the State is forever gone. The exercise of jurisdiction by the Federal Government and by a State over the same subject-matter at the same time cannot exist, and the State must, by the Constitution, yield. But I will not further enlarge. Illustrations innumerable might be given of the unlimited power which Congress has to protect the fundamental rights of a citizen, if the opinion of the dissenting justices and the Judiciary Committee be the true construction of the fourteenth amendment. I will give but one.

Let me briefly state the premises. The fourteenth amendment, it is said, protects every fundamental right of a citizen of a State, and Congress has the power to enact any law which they may think appropriate to protect those rights and to punish the invader or offender. One of these fundamental rights is personal liberty and security

from personal harm. The person of every citizen in the United States is, therefore, under the direct protection of Congress. Well, a man's nose is a part of his person. It is a prominent part, and one which every American citizen cherishes with such devotion, that he follows it right or wrong, straight or turned awry, whether it leads him to his own business, or to intermeddle with the affairs of others. And I know of no part of an American citizen which, on being invaded, he will defend quicker, or with greater indignation and to the last extremity or the last ditch. Now, should any one with malice prepense pull the nose of a colored citizen of the United States, residing in the State of New Jersey, to what power should he apply to protect that nose? I always thought he must go to a State tribunal and proceed for "assault and battery." But under the new reading of the Constitution by the minority of the Supreme Court and the Judiciary Committee, he must apply to Congress to throw their protecting arms around that nose and shield it from invasion. He reads the argument of the Senator from New Jersey, and being convinced thereby that his protection is within the power of Congress, he applies to that Senator to protect his nose. The honorable Senator introduces a bill, as in duty bound both by his logic and his obligation to his colored constituents, to be entitled "An act for the protection of the noses of American citizens from invasion and depredation," and he rises to advocate its passage.

If I misstate the line of argument he would follow, as I understand it, from his position, I beg to be corrected. His first premise would be, that the fourteenth amendment protects every fundamental privilege and immunity of all citizens of the United States; second, that citizens of the States are but citizens of the United States; third, that personal security is a fundamental right; fourth, that pulling a man's nose is a violation of his personal security, and, therefore, Congress has the power to protect his nose. But this of itself would be a very dry presentation of the case, and he could go further and demonstrate the necessity for action by Congress. The organ invaded is by all dearly treasured, and with very many it is a most prominent feature and an index of character. Geographically speaking, it may be called a white man's promontory and a colored man's plateau. Many physiognomists contend that it is *the* organ and index of character. And hence the importance of protecting it in its normal state. For should it be pulled often, it would be elongated and destroy the man's identity. His friends could not recognize him, and the detective police could not identify him. Besides, when the index to character is destroyed, the owner of the index loses his character. His character is changed, and he thus sustains a double injury. And unless this foul invasion be stopped by act of Congress, the man's nose, like that of Solomon's beloved, would become "as the tower of Lebanon that

looketh toward Damascus." And thus we see that Congress, if it should see proper, can pass "An act for the protection of the noses of American citizens from invasion." If this be not a logical sequence, I will thank any member of the Judiciary Committee to set me right.

Surely the people of the States did not mean such results as this when they adopted that amendment. They meant something practical, something sensible. They did not mean to lay the knife to the throat of each State in this sweeping, suicidal manner. They did not mean for Congress to swallow up the State Legislatures, for the President to be the ruler of the United States, and governor of each State besides; and for the Federal Judiciary to supplant entirely and forever all State courts. They did not mean that every case of petit larceny should be drawn to the Supreme Court of the United States. I am amazed when I see gentlemen confessedly learned in constitutional law prying into the fourteenth amendment to discover such infinitesimal power as this. I would not be more surprised were I to walk forth some day after a long drought and see one of my honorable friends sitting and eagerly watching for the bob of his cork, while fishing in a dry well for minnows, and using as his hook an anchor of the Great Eastern baited with a copy of the Congressional Globe.

A construction more dangerous to the existence of the States than this cannot be conceived. The most devoted federalist, the most ardent advocate of absolute consolidation, could not go further in his wildest dreams and desire for one government, one power, complete unification.

The minority of the Supreme Court were not unaware that their view of the fourteenth amendment excites alarm in the minds of constitutional lawyers for the safety of the States; for Mr. Justice Bradley says, (page 123, 16 Wallace:)

> But great fears are expressed that this construction of the amendment will lead to enactments by Congress interfering with the internal affairs of the States, and establishing therein civil and criminal codes of law for the government of the citizens, and thus abolishing the State governments in everything but name; or else, that it will lead the Federal courts to draw to their cognizance the supervision of State tribunals on every subject of judicial inquiry, on the plea of ascertaining whether the privileges and immunities of citizens have not been abridged.
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> In my judgment no such practical inconveniences would arise. Very little, if any, legislation on the part of Congress would be required to carry the amendment into effect. Like the prohibition against passing a law impairing the obligation of a contract, it would execute itself. The point would be regularly raised in a suit at law, and settled by final reference to a Federal court. As the privileges and immunities protected are only those fundamental ones which belong to every citizen, they would soon become so far defined as to cause but a slight accumulation of business in the Federal courts. Besides, the recognized existence of the law would prevent its frequent violation. But even if the business of the national courts should be increased, Congress could easily supply the remedy by increasing their number and efficiency. The great question is, what is the true construction of the amendment? When once we find that, we shall find the means of giving it

effect. The argument from inconvenience ought not to have a very controlling influence in questions of this sort. The national will and national interest are of far greater importance.

It appears from this extract, that he does not deny the stretch of Federal power which must follow the opinion of the minority. He says, "Great fears are expressed that this construction" will abolish the State governments in everything but name, &c., and without combating this opinion, he says that in his judgment "no such *practical* inconveniences would arise." He does not deny that Congress under the fourteenth amendment, as construed by him, *can* "interfere with the internal affairs of the States," *can* establish therein "civil and criminal codes of law for the government of the citizens," *can* "confer on the Federal courts power to draw to their cognizance the supervision of State tribunals on every subject of inquiry on the plea of ascertaining whether the privileges and immunities of citizens have not been abridged," and *can* thus "abolish the State governments in everything but name;" but he meets the suggestion of these inevitable consequences by saying, "*very little* if any *legislation* on the part of *Congress* would be required to carry the amendment into effect." I agree with him that "very little legislation on the part of Congress would be required to carry the amendment into effect," as that amendment is construed by him. It would require but a *single statute*, establishing a civil and criminal code for all citizens of the United States, and giving the jurisdiction to the Federal courts. I agree with him, that "the point would be regularly raised in a suit at law and settled by *final* reference to a Federal court." I agree with him, that "if the business of the national courts should be increased, Congress could easily supply the remedy by increasing their number and efficiency." But, sir, what a spectacle would all this present. The civil and criminal codes of the States swept away; the legislative power of the States abolished; the executive of each State a mere shadow; his approval of laws, civil and criminal, transferred to the Federal Executive; his power to execute State laws given to the Federal Executive; his pardoning power placed in the hands of the President; the State courts left with their ermine, and not a case involving a fundamental right of any citizen left upon the docket, and sheriffs and constables supplanted by marshals and their deputies. But I desist, for the scene is sickening; for it presents an army of Federal judges, backed by an army of Federal attorneys and Federal marshals and deputies, marching out from Washington into all the States, and followed, if need be, by the Army of the United States, to try every cause in which a fundamental right of any citizen might be involved.

But I do not agree with Mr. Justice Bradley, that these fundamental privileges and immunities "would soon become so far defined as to cause but a slight accumulation of business in the Federal courts."

I do not agree with him that "the recognized existence of the law would prevent its frequent violation." Why, sir, are not the fundamental rights of every citizen already defined? Do we not know what they are? Does it remain for a Federal judge to teach an American citizen what his rights are? This is a political, not a judicial question. Judges are not appointed to define our political rights, our civil rights. They decide whether a right already existing has been forfeited, as the right to life, liberty, or property; they decide whether A or B has the title to certain property; but God forbid that the determination of what are the fundamental civil and political rights of an American citizen shall ever depend on the opinion or decision of a Federal court.

But, again, does the recognized existence of any law prevent its frequent violation? Does the recognition of the fundamental right of A to his life, his liberty, his property, prevent B from violating that right? Does it prevent murder, arson, robbery, forgery, false imprisonment, and a hundred other crimes, each one of which is a violation of a citizen's fundamental rights? The reasons assigned by Mr. Justice Bradley to show that no such inconveniences would arise from his construction of the fourteenth amendment, may hold when the millennium shall come, when there shall be wars and rumors of wars no more; when the lion and lamb shall lie down together; when man shall no longer be man, but an angel.

The next inquiry is, how is a citizen of the United States to be protected in the enjoyment of his privileges and immunities. Is he to be protected by Congress? He may, but not primarily. The fourteenth article declares that "*no State*" shall abridge his rights as a citizen of the United States, and that Congress may enforce that article by appropriate legislation. But until a State shall attempt to abridge his rights, Congress has no power to act. But has he no protection under the fourteenth amendment except in a case where a State shall seek to abridge his rights? Clearly he has. His redress is in the courts. If a privilege which he enjoys as a citizen of the United States—that is, a right given and secured to him by the Constitution—be invaded by any one, he has his remedy, as in any other case of invasion of any of his fundamental rights as a citizen of a State. And his remedy does not stop with the State courts. For by the Constitution, the Federal judiciary, has jurisdiction over all questions arising under the Constitution and the laws passed in pursuance thereof. So that an appeal will lie from the State court to the Federal court in any case where a right is involved whose existence depends on the Federal Constitution. And this again shows that, if the minority of the Supreme Court be correct, this clause of the Federal Constitution is so broad, that every case involving a fundamental right of a citizen would be subject to review in the Federal courts, and

go by appeal or writ of error to the Supreme Court of the United States.

The Constitution forbids any State to impair the obligation of contracts, and before the fourteenth article Congress had the power to enforce all its delegated powers by appropriate legislation. But did any lawyer ever dream that Congress had the power to pass a law punishing a State or an individual for impairing the obligations of a contract? And yet the inhibition on the States in that instance is precisely like the one imposed by the fourteenth amendment. Neither confers any power on Congress except to prevent a State from infringing by legislation or otherwise the rights of the citizen thereby secured. The remedy under the provision forbidding the State to impair the obligation of a contract or to pass any *ex post facto* law is just the same; and that is, as has been the practice under the Government from its foundation, by appeal from a State court, where a law is sought to be enforced against a citizen which is in violation of any of these provisions of the Constitution, to the Federal courts, which have appellate jurisdiction of all questions arising under the Constitution of the United States or the laws of Congress passed in pursuance thereof.

Thus, Mr. President, I have endeavored to trace what I believe to be the principle that underlies the fourteenth amendment. I will not stop to apply it to the various provisions of this bill. I believe that it is the correct reading of the fourteenth amendment.

The question may be asked, Is it not dangerous to the States? My answer is, no; that it involves no danger to the States or to State-rights. For what does it amount to under this construction? Simply this: that rights which the citizen of the United States enjoys under the Federal Constitution, and which the Federal Government cannot deprive him of, shall not be abridged by the State. In other words it is an extension of the guarantees of liberty and of the Bill of Rights that are laid down for the citizens of the United States in the first eight articles of the amendments to the Constitution, over all the citizens of the States, preventing the States themselves from depriving their citizens of those guarantees. In that view of the case, I can conceive of no evil that can arise to the States or to State-rights by this construction.

If it is not the true reading of that amendment, then that portion of it which I have been considering, either means nothing, or it means much more than the people of the United States ever intended; for it is a transfer of the reserved rights of the States, of their legislative, executive, and judicial powers, to the Federal Government, to be exercised at the will of Congress.

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