SPEECH

OF

HON. W. D. KELLEY, OF PENNSYLVANIA,

ON

THE CONSTITUTIONAL REGULATION OF SUFFRAGE;

DELIVERED

IN THE HOUSE OF REPRESENTATIVES, FEBRUARY 27, 1866.

WASHINGTON:
PRINTED AT THE CONGRESSIONAL GLOBE OFFICE.
1866.

THE CONSTITUTIONAL REGULATION OF SUFFRAGE.

The House resumed the consideration of the following joint resolution (H. R. No. 63) proposing an amendment to the Constitution of the United States:

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

ARTICLE —. The Congress shall have power to make all laws which shall be necessary and proper to secure to the citizens of each State all privileges and immunities of citizens in the several States, and to all persons in the several States equal protection in the rights of life, liberty, and property.

Mr. KELLEY said:

Mr. SPEAKER: I shall support this proposed amendment of the Constitution of the United States, not because I believe it to be absolutely needed, but because there are those, and some of them on this side of the House, who doubt that the powers to be imparted by it are already to be found in the Constitution. I believe them to have been there from the hour of its adoption. They preceded the amendments proposed by the first Congress, and their existence is, as I will show presently by the action of that Congress which was largely composed of members of the Convention that framed the Constitution and of the several State conventions that ratified it. When all men not disqualified by crime or pauperism shall be intrusted with the ballot they can protect their own rights, and will need no congressional guardianship; and when the States recognize the equality of all their people before their laws they will have no cause to dread congressional censorship.

On the 10th of January I took occasion to call the attention of the House to an extract from the debate in the Virginia convention upon ratifying the Constitution of the United States, which occurred on the 18th of June, 1788. That extract was as follows:

"Mr. Monroe wished that the honorable gentleman who had been in the Federal Convention should give information respecting the clause concerning elections. He wished to know why Congress had the power to control over the time, place, and manner of electing Representatives, and the time and manner of that of Senators; and also why Congress were to have to do with the place of electing Senators."

Mr. Madison said:

"Mr. Chairman, the reason of the exception was that if Congress should fix the place of electing the Senators, it might compel the State legislatures to elect them for a different place than that of their usual sessions, which would produce some inconvenience, and was not necessary for the purpose of regulating elections. But it was the opinion of the Convention Government a control over the time and manner of choosing the Senators to prevent the [illegible]

"With respect to the other point, it was thought proper the regulation of the time, place, and manner of electing Representatives should be uniform throughout the continent. Some States had particular customs and conditions in the exercise of that power, which it was thought proper to abolish. Upon the whole, it was conceived that uniformity in every thing relating to the qualifications of the electors and elected was necessary. With respect to the time of holding the elections, it was found necessary to fix it in the Constitution. It was found that the legislatures, when they had the power, would frequently alter the time of election, so as to prevent the members from getting home to take their seats in the other house of Congress. This was the principal reason why the Convention had fixed the time of election."

The Convention [illegible]

qualifications requisite for electors for members of Congress and for President and Vice President should be those for electors for the most numerous branch of the State Legislature. Hence it was that Madison said:

"With respect to the other point, it was thought that the regulation of the time, place, and manner of electing Representatives should be uniform throughout the continent. Some States might regulate the elections on the principles of equality, and others might regulate them otherwise. This diversity would be obviously unjust. Elections are regulated now unequally in some States, particularly South Carolina, with respect to Charleston, which has a representation of thirty members."

The sages who framed the Constitution saw that it was necessary that the Federal Government should decide who should be electors for those who were to administer and maintain that Government. What had the Federal Government to do with the Legislature of South Carolina? And would not Madison's allusion to it have been irrelevant and impertinent if the article under discussion was not intended to empower Congress to remedy the inequality alluded to by fixing the qulifications of electors of the most numerous branch, when determining those of electors for members of Congress, President and Vice President? He was too precise a thinker and too cautious in expression to have subjected himself to such criticism.

Again on the 24th of January I read, in reply to the gentleman from Iowa, [Mr. KASSON,] who had combatted my position, the following extract from the debate in the National Convention on the 9th of August, 1787:

"Article six, section one, was then taken up.

"Mr. MADISON and Mr. GOUVERNEUR MORRIS moved to strike out 'each House,' and to insert 'the House of Representatives;' the right of the Legislatures to regulate the times and places, &c., in the election of Senators being involved in the right of appointing them; which was disagreed to.

"A division of the question being called for, it was taken on the first part down to 'but their provisions concerning,' &c.

"The first part was agreed to, nem. con.

"Mr. PINCKNEY and Mr. RUTLEDGE moved to strike out the remaining part, namely, 'but their provisions concerning them may at any time be altered by the Legislature of the United States.' The States, they contended, could and must be relied on in such cases.

"Mr. GORHAM. It would be as improper to take this power from the national Legislature as to restrain the British Parliament from regulating the circumstances of elections, leaving this business to the counties themselves.

"Mr. MADISON. The necessity of a General Government supposes that the State Legislatures will sometimes fail or refuse to consult the common interest at the expense of their local convenience or prejudices. The policy of referring the appointment of the House of Representatives to the people, and not to the Legislatures of the States, supposes that the result will be somewhat influenced by the motive. This view of the question seems to decide that the Legislatures of the States ought not to have the uncontrolled right of regulating the times, places, and manner of holding elections. It was impossible to foresee all the abuses that might be made of the discretionary power. Whether the electors should vote by ballot or *viva voce*, should assemble at this place or that place; should be divided into districts or all meet at one place; should all vote for all the Representatives, or all in a district vote for a number allotted to the district; these and many other points would depend on the Legislatures, and might materially affect the appointments. Whenever the State Legislatures had a favorite measure to carry, they would take care so to mold their regulations as to favor the candidates they wished to succeed. Besides, the inequality of the representation in the Legislatures of particular States would produce a like inequality in their representation in the national Legislature, as it was presumable that the counties having the power in the former case would secure it to themselves in the latter. What danger could there be in giving a controlling power to the national Legislature? Of whom was it to consist? First, of a Senate, to be chosen by the State Legislatures. If the latter, therefore, could be trusted, their representatives could not be dangerous. Secondly, of Representatives elected by the same people who elect the State Legislatures. Surely, then, if confidence is due to the latter, it must be due to the former. It seemed as improper in principle, though it might be less inconvenient in practice, to give to the State Legislatures this great authority over the election of the Representatives of the people in the general Legislature, as it would be to give to the latter a like power over the election of their representatives in the State Legislatures.

"Mr. KING. If this power be not given to the national Legislature, their right of judging of the returns of their members may be frustrated. No probability has been suggested of its being abused by them. *Although this scheme of erecting the General Government on the authority of the State Legislatures has been fatal to the Federal establishment, it would seem as if many gentlemen still foster the dangerous idea.*

"Mr. GOUVERNEUR MORRIS observed that the States might make false returns, and then make no provisions for new elections.

"Mr. SHERMAN did not know but it might be best to retain the clause, though he had himself sufficient confidence in the State Legislatures.

"The motion of Mr. PINCKNEY and Mr. RUTLEDGE did not prevail.

"The word 'respectively' was inserted after the word 'State.'

"On the motion of Mr. READ, the word 'their' was struck out, and 'regulations in such cases' inserted in place of 'provisions concerning them,' the clause then reading: 'but regulations in each of the foregoing cases may, at any time, be made or altered by the Legislature of the United States.' This was meant to give the national Legislature a power not only to alter the provisions of the States, but to make regulations in case the States should fail or refuse altogether.

"Article six, section one, as thus amended, was agreed to, nem. con."

An alternative was before the Convention. It was this: the power of deciding who should vote for members of Congress, President and Vice President of the United States, and with it the power to determine who should vote for members of the most numerous branch of the State Legislature, must either be given to the Legislature of each State or confided to Congress. Gentlemen have doubtless observed that Madison saw this, and said:

"It seems as improper in principle, though it might be less inconvenient in practice, to give to the State Legislatures this great authority over the election of the representatives of the people in the general Legislature, as it would be to give to the latter a like power over the election of their representatives in the State Legislatures."

And Mr. King pointedly repudiated the idea of confiding this vital power to the States, when he said:

"Although this scheme of erecting the General Government on the authority of the State Legislatures has been fatal to the Federal establishment, it would seem as if many gentlemen still foster the dangerous idea."

What had brought the Confederacy, then expiring, to its death throe? It was the fact that it rested upon the Legislatures of the States; and the members of the Convention framing an instrument which should make a "more perfect Union," placed this vital power where it should be, where it would be used for the maintenance of the Union; and did not confide it to the States which had just used it for the destruction of the Confederacy.

Sir, I wish to project upon this House no new view. I desire to invoke no new rules of construction, but I am willing to be bound by those which prevail in all our courts, and in the courts of the land from which we derive our laws.

They are most briefly and explicitly expressed by Blackstone, and from his pages I take my rules of construction:

"The fairest and most rational method to interpret the will of the legislator is by exploring his intentions at the time when the law was made, by signs most natural and probable, and those signs are either the words, the context, the subject-matter, the effects and consequence, or the spirit and reason of them all."

Again:

"There are three points to be considered in all remedial statutes"—

The Constitution, adopted as it was to cure the defects of the Articles of Confederation, may be regarded as a remedial statute. The old Constitution, the Articles of Confederation, had failed utterly to accomplish the purposes of a new one was to be made to remedy its defects.

"There are three points to be considered in the exposition of all remedial statutes—the old law, the mischief, and the remedy: that is how the common law stood at the making of the act, what the mischief was for which the common law did not provide, and what remedy the Parliament had provided to cure this mischief."

Binding myself by these rules of construction, I undertake to make good the doctrine that they who framed and adopted the Constitution of the United States did it to remedy the evil of a General Government depending upon the judgment, caprice, or prejudices of the people of each of the several States. The Confederacy had crumbled from its false foundation upward to its capstone, and their object was to make a more perfect Union, one that would secure the blessings of liberty to themselves and their posterity till the last syllable of recorded time. Their purpose was to escape from chaos and to create and perpetuate order. This Union for which they provided was to rest on the suffrages of freemen, each the equal of others before the law, and was to be indivisible and indestructible.

Next, sir, let me point you to the context. The Constitution guarantees that "the United States shall guaranty to every State in this Union a republican form of government;" and the section to which I am referring gives Congress the power to enforce the guarantee. If the ultimate power to regulate the suffrage for Representatives in Congress and members of the most numerous branch of the body that was to elect Senators had been left to each State to determine for itself, Congress could not have enforced this guaranty or prevented the establishment of aristocracies or oligarchies.

The members of that Convention had suffered for the want of an adequate and efficient General Government. They had undertaken to administer the Government of the Confederation, and had found it utterly incapable of maintenance. They therefore took care to arm the Government for which they were providing with power to enforce every right, privilege, and immunity accorded to the people, and to guaranty a republican form of government to each State.

Another duty which they laid upon the General Government springs from the provision that

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

In this connection, on a former occasion, I illustrated the necessity of Congress possessing the control over the suffrage in the States to the extent I have pursued, when I showed that in the case of election of State officers, by refusing to count the votes cast for persons entitled to vote for members of the most numerous branch of the State Legislature, the whole election of Senators of the United States could be defeated. Virginia, which proposed this provision of the Constitution, had recognized the right of citizenship [illegible] the citizens of [illegible] continuous residence of two years [illegible] then, and regard [illegible]

franchise the citizens of other States who may settle within its limits for five years, it can disfranchise them for ten or fifty years, or any other term within the ordinary limits of the natural life of man. The disfranchised citizens of a democratic republican State would not be in the full enjoyment of "all privileges and immunities of citizens." The framers of the Constitution provided against such possibilities by confiding to Congress control of the "manner of holding elections."

The evils they sought to remedy required precisely the power which I assert was imparted to Congress by the fourth section of the first article of the Constitution. But I am not willing to let the question go to the country on my assertion, or the meager array of authorities I have hitherto produced. To prove that the proposed amendment will but reinvigorate a primitive and essential power of the Constitution, I pass, sir, to an examination of the debates in the several State conventions to which the draft of the Constitution was submitted for ratification. They exhibit most amply the broad construction which was given to the section to which I have referred by both the advocates and the opponents of the Constitution. They, in my judgment, establish beyond question the fact that the members of the Federal Convention, the members of each of the State conventions, and the enlightened people of the whole country knew that the power to determine the question as to who should be electors of all Federal officers was vested, by the express language of the Constitution, in Congress.

Patrick Henry, in the Virginia convention, June 17, 1788, said:

"Congress is to have a discretionary control over the time, place, and manner of elections. The Representatives are to be elected, consequently, when and where they please. As to the time and place, gentlemen have attempted to obviate the objection by saying that the time is to happen once in two years, and that the place is to be within a particular district, or in the respective counties. But how will they obviate the danger of referring the power of election to Congress? Those illumined genii may see that this may not endanger the rights of the people; but to my unenlightened understanding it appears plain and clear that it will impair the popular weight in the Government. Look at the Roman history. They had two ways of voting—the one by tribes and the other by centuries. By the former, numbers prevailed; in the latter, riches preponderated. According to the mode prescribed, Congress may tell you that they have a right to make the vote of one gentleman equal to the votes of one hundred poor men. The power over the manner *plainly* of the most dangerous kind. *They may modify it in the place.* *They may regulate the number of votes by the quantity of property without involving any repugnancy to the Constitution.*"

In the same convention, June 14, six days later—

"Mr. Mason animadverted on the control of Congress over the elections, and was proceeding to prove that it was dangerous, when he was called to order by Mr. Nicholas for departing from the clause under consideration. A desultory conversation, and Mr. Mason was permitted to proceed. He was of opinion that the control over elections tended to destroy the responsibility. He declared he had endeavored to discover whether this power was really necessary, or what was the necessity of vesting it in the Government; but he could find no good reason for giving it. That the reasons suggested were, were that in case the States should refuse or neglect to make regulations, or in case they should be prevented from making regulations by rebellion or invasion, then the General Government should interpose."

In the same convention, Mr. Madison, June 14, 1788, said:

"With respect to the time, place, and manner of elections, I cannot think, notwithstanding the apprehensions of the honorable gentleman, that there is any danger, or if abuse should take place, that there is not sufficient security. *If all the people of the United States should be directed to go to elect in one place,* the members of the Government would be execrated for the infamous regulation. Many would go to trample them under foot for their conduct, and they would be succeeded by men who would remove it. They would not dare to meet the universal hatred and detestation of the people, and run the risk of the certain dreadful consequences. We must keep within the compass of human probability. If a possibility be the cause of objection, we must object to every government in America. But the honorable gentleman may say that better guards may be provided. Let us consider the objection. The power of regulating the time, place, and manner of elections must be vested somewhere. It could not be fixed in the Constitution without involving great inconveniences. They could then have no authority to adjust the regulations to the changes of circumstances. *The question then is, whether it ought to be fixed unalterably in the State governments, or subject to the control of the General Government. Is it not obvious that the General Government would be destroyed without this control?*"

I turn from Virginia to Massachusetts. On two days of January, 16 and 17, 1788, the debate ran on this question. In its progress—

"Mr. Pierce, after reading the fourth section, wished to know the opinion of the gentlemen on it. If Congress appeared thereby to have a power to regulate the time, place, and manner of holding elections. In respect to the manner, said Mr. Pierce, suppose the Legislature of this State should prescribe that the choice of the Federal Representatives should be in the same manner as that of Governor—a majority of all the votes in the State being necessary to make it such—and Congress should deem it an improper manner, and should order that it be so practiced in several of the southern States, where the highest number of votes make a choice, have they not power by this section to do so?

"Mr. Bishop rose and observed, that by the fourth section Congress would be enabled to control the election of Representatives. It has been said, says he, that this power was given in order that refractory States may be made to do their duty."

The gentleman from Iowa [Mr. KASSON] and other members made that response to my suggestion, and I beg them to observe how Mr. Bishop answered it to the members of the Massachusetts convention:

"But if so, sir, what was it said to mean for? If the time, place, and manner were to be regulated by Congress, it was idle to say that the people should choose their Representatives. If Congress had the control, they could, by one regulation, prevent the choice of any Representatives at all. They could compel the people to go to the most inconvenient place in the State to give in their votes. They could, by a repugnant regulation, compel them to give in their votes for Representatives at the same time that the Electors of President and Vice-President were appointed. They could, by a repugnant regulation, compel the people to vote for Representatives at a time when they were obliged to attend the General Court. They could, by a repugnant regulation, oblige the people to vote for Representatives at the most inconvenient season of the year. They could, by a repugnant regulation, notwithstanding the Legislature of the State should prescribe that the choice of the Federal Representatives should be in the same manner as that of Governor—a majority of all the votes in the State being necessary to make it such—and Congress should deem it an improper manner, and should order that it be so practiced in several of the southern States, where the highest number of votes make a choice, have they not power by this section to do so?

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Mr. Bishop's assault upon Congress reminds me of certain recent utterances of a like character. I am, however, happy in the consciousness that the people understand that executive assaults upon Congress are in derogation of their own rights. They recognize in the popular branch of Congress their own immediate representatives, and will sustain it in resisting all encroachments on their rights by whomsoever

Mr. CHANDLER. Will the gentleman allow me to ask him a question?

Mr. KELLEY. Yes, sir.

Mr. CHANDLER. Does the gentleman recognize the President as the representative of the people or not?

Mr. KELLEY. I recognize him as the agent to whom [illegible] for an inscrutable Providence the executive power of the country. I recognize him as the agent, in all the functions [illegible] and regular [illegible] to the law-making branch [illegible]

"A State Legislature under the influence of their Senators who would have their fullest confidence, or under the influence of ambitious or popular characters, or in times of popular commotion and when faction and spirit run high, would introduce such regulations as would render the rights of the people insecure and of little value. They might make an unequal and partial division of the States into districts for the election of Representatives, or they might even disqualify one third of the electors. Without these powers in Congress the people can have no remedy. But the fourth section provides a remedy, a controlling power in a Legislature composed of Senators and Representatives of twelve States, without the influence of our commotions and factions, who will hear impartially, and preserve and restore to the people their equal and sacred rights of election.

"Hon. Mr. White said, we ought to be jealous of rulers. All the godly men we read of have failed—nay, he would not trust a 'flock of Mosess.' If we give up this section, says he, there is nothing left. Suppose the Congress should say that none should be electors but those worth fifty or a hundred pounds sterling, cannot they do it? Yes, said he, they can, and if any lawyer (alluding to Mr. Parsons) can beat me out of it, I will give him ten guineas."

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"Mr. J. C. Jones said it was not right to argue the possibility of the abuse of any measure against its adoption. The power granted to Congress by the fourth section is a necessary power. It will provide against negligence and dangerous designs. The Senators and Representatives of this State, Mr. President, are now chosen by a small number of electors; and it is likely we shall grow equally negligent of our Federal elections. Or, sir, a State may refuse to send to Congress its Representatives, as Rhode Island has done. Thus we see its necessity. To say that the power may be abused is saying what will apply to all power. The Federal Representatives will represent the people—they will be the people—and it is not probable they will abuse themselves. Mr. Jones concluded with repeating, that the arguments against this power could be urged against any power whatever."

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"Judge Sumner proceeded to demonstrate the necessity of the fourth section, the absurdity of the supposition that Congress would remove the places of election to remote parts of the States; combatted the idea that Congress would, when chosen, act as badly as possible, and concluded by asking, if a war should take place, (and it was supposable,) if France and Holland should send an army to collect the millions of livres they have lent us in the time of our distresses, and that army should be in possession of the seat of government of any particular State, (as was the case when Lord Cornwallis ravaged Carolina,) and that the State Legislature could not appoint the electors, is not a power to provide for such elections necessary to be lodged in the general Congress?"

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"Captain Snow. It has been said, Mr. President, that there is too much power delegated to Congress by the section under consideration. I doubt it; I think power the hinge on which the whole Constitution turns."

A note is appended to the report by the reporter of that convention. It is as follows:

"Several other gentlemen went largely into the debate on the fourth section, which those in favor of it demonstrated to be necessary, first, as it may be used to correct a negligence in elections; secondly, as it will prevent the dissolution of the Government by designing and refractory States; thirdly, as it will operate as a check in favor of the people against any designs of the Federal Senate and their constituents, the State Legislatures, to deprive the people of their rights of election; and fourthly, as it provides a remedy for the evil should any State, by invasion or other cause, not have it in its power to appoint a place where the citizens thereof may meet to choose their Federal Representatives."

I submit the following from the debates in the New York convention, June 25 and 26, 1788:

"Hon. Mr. Lansing did not think it right that Congress should have the power of prescribing or altering the time, place, and manner of holding the elections. He apprehended that the clause might be so construed as to deprive the States of an essential right which, in the true design of the Constitution, was to be reserved to them. He therefore wished the clause might be explained, and proposed for the purpose the following amendment:

"Resolved, (as the opinion of the committee,) That nothing in the Constitution now under consideration shall be construed to authorize the Congress to make or alter any regulations in any State respecting the times, places, or manner of holding elections for Senators or Representatives, unless the Legislature of such State shall neglect to make laws or regulations for the purpose, or from any circumstance be incapable of making the same, and then only until the Legislature of such State shall make provision in the premises.

"Hon. Mr. Jay said that as far as he understood the ideas of the gentleman he seemed to have doubts with respect to this paragraph, and feared it might be misconstrued and abused. He said that every Government was imperfect unless it had the power of preserving itself. Suppose that by design or accident the States should neglect to appoint Representatives; certainly there should be some constitutional remedy for this evil. The obvious meaning of the paragraph was, that if this neglect should take place Congress should have power, by law, to support the Government and prevent the dissolution of the Union. He believed this was the design of the Federal Convention.

"Hon. R. Morris suggested that so far as the people, distinct from their Legislatures, were concerned in the operation of the Constitution, it was absolutely necessary that the existence of the General Government should not depend for a moment on the will of the State Legislatures. The power of perpetuating the Government ought to belong to their Federal Representatives; otherwise, the rights of the people would be essentially abridged."

The following extracts are from the debates of the North Carolina convention, July 25, 1788:

"Mr. Spencer. By this clause it is evident that it is in the power of Congress to make any alterations except as to the place of choosing Senators. They may alter the time from six to twenty years, or to any time; for they have an unlimited control over the election of the Representatives. It deprives the people of the very mode of choosing them. It seems nearly to throw the whole power of election into the hands of Congress. It strikes at the mode, time, and place of choosing Representatives. It puts all but the place of electing Senators into the hands of Congress.

"Mr. Iredell. [illegible] may arise when the exercise of this ultimate power in Congress may be necessary. As for instance, if a State should be involved in war, and its Legislature could not assemble, as was the case of South Carolina, and occasionally of some other States during the late war. It might also be useful for this reason: lest a few powerful States should combine, and make regulations concerning elections which might deprive many of the electors of a fair exercise of their rights, and thus injure the community, and occasion great dissatisfaction. And it seems natural and proper that every Government should have in itself the means of its own preservation. A few of the great States might combine to prevent the election of Representatives at all, and thus a majority might be wanting to do business.

"Mr. Spencer. This clause provides that a Congress may at any time alter such regulations, except as to the places of choosing Senators. These words are so vague and uncertain that it must ultimately destroy the whole liberty of the United States. It strikes at the very existence of the States, and supersedes the necessity of having them at all.

"Mr. Bloodworth. Now, why does not this elective [illegible] and [illegible] power of Congress over the times, places and manner [illegible] themselves? They may prolong the time of election so long, the place so inconvenient, and the manner so oppressive, that it will entirely destroy representation. I hope gentlemen will exercise their own understanding on this occasion, and not let their judgment be led away by these shining characters, for whom, however, I have the highest respect. This Constitution, if adopted in its present mode, must end in the subversion of our liberties. Suppose it takes place in North Carolina, can farmers elect them? No, sir. The elections may be in such a manner that men may be appointed who are not [illegible] of the people. This may exist, and it ought to be guarded against. As to the place, suppose Congress should order the elections to be held in the most inconvenient place, in the most inconvenient district; could every person entitled to vote attend at such a place? Suppose they should order it to be laid off into [illegible] and order the election to be held within each district, yet may not their power over the manner of election enable them to exclude from voting every description of men they please?

"Governor Johnston. I am not apprehensive that this article will be attended with all the fatal consequences which the gentleman conceives. I conceive that Congress will have no other power than the States had. The States with regard to elections must be governed by the articles of the Constitution; so must Congress.

"Mr. M'Dowall. The freedom of election is one of the greatest securities we have for our liberty and privileges. It was supposed by the member from Edenton, that the control over elections was only given to Congress to be used in case of invasion. I differ from him. That could not have been their intention, otherwise they could have expressed it. But, sir, it points forward to the time when there will be no State Legislatures—to the consolidation of all the States. The States will be kept up as boards of elections.

"Mr. Iredell answered, that he stated the case of invasion as only one reason out of many, for giving the ultimate control over elections to Congress.

"Mr. Davie. The gentleman from Edenton (Mr. Iredell) has pointed out the reasons of giving this control over elections, the principal of which was to prevent a dissolution of the Government by designing States. If all the States were equally possessed of absolute power over their elections, without any control of Congress, danger might be justly apprehended where one State possesses as much territory as four or five others, and some of them being thinly peopled now, will daily become more numerous and formidable. Without this control in Congress, those large States might successfully combine to destroy the General Government. It was therefore necessary to control any combination of this kind.

"Another principal reason [illegible]

[illegible] matter of fact. The history of the little State of Rhode Island is well known. An abandoned faction have seized on the reins of government, and frequently refused to have any representation in Congress. If Congress had the power of making the law of elections operate throughout the United States, no State could withdraw itself from the national councils [illegible] of a majority of members of Congress. [illegible] been the case, that [illegible] had no representation [illegible] happen again [illegible] this power to keep the Government [illegible]. This being a Federal Government and involving the interests of several States, and some acts requiring the assent of more than a majority, they ought to be able to keep their representation [illegible] been a solecism to have a Government without any means of self-preservation. [illegible] only instance of a Government without such means, and it is a nameless system [illegible] people of the [illegible]

[illegible]

"Mr. Spencer. [illegible]

[illegible]

I cite with pleasure the following extracts from the debates of the Pennsylvania convention [illegible]

[illegible]

that the Assembly should order an election to be held at Pittsburg, ought not the General Government to have the power to alter such improper election of one of its own constituent parts?

But there is an additional reason still that shows the necessity of this provisionary clause. The members of the Senate are elected by the State Legislatures. If these Legislatures possessed uncontrolled the power of prescribing the time, place, and manner of electing members of the House of Representatives, the members of one branch of the general Legislature would be dependent on the will of the electors of the other branch, and the General Government would lie prostrate at the mercy of the Legislatures of the several States."

In the same convention, December 4, 1787, Mr. Wilson said, quoting from Montesquieu:

"In a democracy the people are in some respects the sovereign, and in others the subject. They can be no exercise of sovereignty but by their suffrages, which are their own will. Now, the sovereign's will is the sovereign himself. The laws, therefore, which establish the right of suffrage are fundamental to this Government. And, indeed, it is as important to regulate in a republic in what manner, by whom, to whom, and concerning what, suffrages are to be given, as it is in a monarchy to know who is the prince, and after what manner he ought to govern."

Then Mr. Wilson continues:

"In this system it is declared that the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature. This being made the criterion of the right of suffrage, it is consequently secured, because the same Constitution guarantees to every State in the Union a republican form of government. The right of suffrage is fundamental to republics."

Again, on December 11, 1787, Mr. Wilson said:

"It is repeated again and again by the honorable gentleman, 'that the power over elections which is given to the General Government in this system is a dangerous power.' I must own I feel myself surprised that an objection of this kind should be persisted in, after what has been said by my honorable colleague in reply. I think it has appeared by a minute investigation of the subject that it would have been not only unwise but highly improper in the late Convention to have omitted this clause, or given less power than it does over elections. Such powers, sir, are enjoyed by every State government in the United States. In some they are of a much greater magnitude, and why should this be the only one deprived of them? Ought not these, as well as every other legislative body, to have the power of judging of the qualifications of its own members? The times, places, and manner of holding elections for Representatives may be altered by Congress. This power, sir, was given them to secure not only a uniformity in those occasions, but even to the very existence of the Federal Government. I have heard some very improbable suppositions, indeed, suggested with regard to the manner in which it will be exercised. Let us suppose it may be improperly exercised, is it not more likely so to be by the particular States than by the Government of the United States? Because the General Government will be more studious of the good of the whole than a particular State will be; and, therefore, when the power of regulating the time, place, or manner of holding elections is exercised by the Congress, it will be to correct the improper regulations of a particular State."

Mr. McKean, December 12, 1787, said, in answer to the objections to section four, article one:

"The House of Representatives is of necessity to be the judges of the elections, returns, and qualifications of its own members. It is therefore their province, as well as duty, to see that they are fairly chosen and are the legal members. For this purpose it is proper they should have it in their power to provide that the times, places, and manner of election should be such as to insure *free and fair elections*."

There is but a meager report of the proceedings of the South Carolina convention, yet we have the record of the following language, uttered by Charles Cotesworth Pinckney, who had been a prominent member of the Convention that framed the Constitution:

"It is absolutely necessary that Congress should have this superintending power; for by the intrigues of a ruling faction in a State the members of the House of Representatives *would not easily represent the people of the State*, and but the same faction, through partial State views, should altogether refuse to send Representatives of the people to the General Government."

Cotesworth Pinckney was much less devoted to the pernicious doctrine of State sovereignty than are some of the gentlemen on this floor.

Mr. Speaker, I thus close the extracts I propose to offer from the debates in the Convention. Let us pause for a few minutes, however, to examine the action of some of them. I shall draw thence pregnant evidence in support of my position, for the latitude of the congressional power under the fourth section of the first article was so keenly appreciated and was so thoroughly repugnant to those who still clung to the anarchy-engendering idea of State sovereignty, that each of five States that accompanied their acts of ratification by recommendations of amendments, proposed an amendment designed to restrict, curtail, or destroy congressional control over elections in the States.

The Massachusetts convention proposed an amendment in the following form:

"That Congress do not exercise the powers vested in them by the fourth section of the first article, but in cases where a State shall neglect or refuse to make the regulations therein mentioned, or shall make regulations *subversive of the rights of the people to a free and equal representation* in Congress, agreeably to the Constitution."

The New Hampshire convention proposed the following as an amendment:

"That Congress do not exercise the powers vested in them by the fourth section of the first article, but in cases where a State shall neglect or refuse to make the regulations therein mentioned, or shall make regulations *subversive of the rights of the people to a free and equal representation* in Congress; nor shall Congress in any case make regulations contrary to a free and equal representation."

The New York convention proposed the following amendment:

"That the Congress shall not make or alter any regulation by any State respecting the times, places, and manner of holding elections for Senators and

Representatives, unless the legislature of such State shall neglect or refuse to make laws or regulations for the purpose, or from any circumstance be incapable of making the same, and then only until the Legislature of such State shall make provision in the premises: *Provided*, That Congress may prescribe the time for the election of Representatives."

The following is the Amendment proposed by the convention of Rhode Island:

"That Congress shall not make any alteration in the times, places or manner of holding elections for Senators and Representatives, or either of them, except when the legislature of any State shall neglect, refuse, or be unable, at the time appointed by the laws of the United States, to prescribe the same, in case where the provision made by the State is imperfect, that no subsequent election in the same shall be void in consequence of such imperfection, but that Congress may, from time to time, by law, provide for the same."

And the convention of South Carolina appended to the act of ratification the following declaration:

"And whereas it is essential to the preservation of the rights reserved to the several States, and the freedom of the people under the operation of a General Government, that the right of prescribing the manner, time, and place of holding the elections to the Federal Legislature should be forever inseparably annexed to the sovereignty of the several States; this Convention doth declare that the same ought to remain to all posterity a perpetual and fundamental right in the local authorities of the State, as the General Government, except in case where the Legislature of the State shall neglect, refuse, or be disabled by invasion or insurrection to perform and fulfill the same according to the true intent of the said Constitution.

"*Resolved*, That it be a standing instruction to all such delegates as may hereafter be elected to represent this State in the General Government to exert their utmost endeavors to procure the calling a convention to take into consideration the Constitution, conformably to the foregoing resolutions."

That the Representatives of South Carolina in the First Congress most faithfully obeyed these instructions to fix the germ of decay in the Constitution, I will show directly.

By the propositions of amendment submitted by the ratifying conventions of five States the attention of the First Congress was distinctly drawn to the question of the propriety of amending the Constitution in this particular manner. The action of that Congress in the premises is therefore of the greatest significance, and well worthy of review.

On June 8, 1789, James Madison, who, it will be remembered, had borne the foremost part in both the Federal Convention and that of Virginia, as a member of Congress from Virginia, proposed, in the national House of Representatives, nine amendments to the Constitution. Were there among them any to limit the powers of Congress, as suggested by the resolutions appended by South Carolina to her acts of ratification? Not one. Madison's remarks, in proposing and explaining these propositions, will be found in the Annals of Congress, First Congress, volume one, pages 440, 441, 442.

[There his manuscript fell.]

Mr. HALE obtained the floor.

Mr. BARTLETT, of Pennsylvania. I hope the gentleman's time will be extended.

Mr. KELLEY. I see the gentleman from Newcastle [Mr. Hale] to right, and I hope the House will agree to the indulgence of extending my time. It is the first time since I became a member of the House that I have asked such a favor. If the gentleman's argument touched the question before the House, as it is likely to hereafter, I will yield; but if not, I must respectfully decline to do so.

Mr. KELLEY. I have thus been engaged in presenting the evidence from which my argument is to be drawn, and I supposed I was laying broad premises to enable me to bring a very logical argument to bear upon the question before the House. I have, not without some labor, gathered and massed a portion of which I have given to the House, and I think it will enable me to touch with some probity the question before it. Now, a question that is to go before the people, if we pass the amendment, and the fact I am presenting ought to be established by the people. [Laughing.] Nothing without hand in seven except copies of the extracts I am reading. I oppose [illegible] any of the gentleman.

Mr. HALE. I will yield to the gentleman on all or fifteen minutes if there is likely to be [illegible] subject before the House.

Mr. KELLEY. Will not the House allow me to proceed?

The SPEAKER. It cannot, unless the gentleman from New York yields the floor.

Mr. KELLEY. I appeal to the courtesy of the gentleman.

Mr. HALE. If the gentleman will get through in fifteen minutes.

Mr. KELLEY. I cannot promise to close in fifteen minutes.

Mr. BARTLETT, of Pennsylvania. I will make the motion that the gentleman be allowed to go on for half an hour, and that he occupy that time, if the gentleman from New York [illegible]

No objection being made, the extension of time was granted.

Mr. KELLEY. Most of the proposed amendments were subsequently incorporated in some shape into the Constitution. They were mainly designed to guaranty to the people the right of petition, freedom of the press, trial by jury, &c. No one of them, however, proposed or intimated any change in that section which declares the congressional right of control over the elections of national Representatives. During the debate which occurred when these propositions were presented, Mr. Vining, of Delaware, said, (as appears by the report on page 167 of the Annals:)

"There were many things mentioned by some of the State conventions which he would never agree to on any conditions whatever; they *changed the principles of the Government and were therefore obnoxious to its friends. The honorable gentleman from Virginia had not touched upon any of them;* he was glad of it because he could by no means bear the idea of an alteration respecting them: he referred to the mode of obtaining direct taxes, *judging of elections*," &c.

On the 21st of July, Mr. Madison's proposed amendments were referred to a select committee of one member from each State, of which Mr. Vining was chairman.

On the 28th of July that gentleman, as chairman of the committee, submitted a report, embracing ten proposed amendments, which were subsequently considered in Committee of the Whole, and some amendments thereto adopted. The debate on these propositions, in the report of which the propositions themselves will be found incidentally stated, extends from page 729 to 789 of the volume already cited. No one of them, however, proposed to limit the power of Congress with respect to elections for Representatives.

But when the propositions of the committee had been considered and reported by the Committee of the Whole, August 18, 1789—

"Mr. Tucker, of South Carolina, moved that the following propositions of amendments to the Constitution of the United States be referred to a Committee of the Whole House, to wit:"

Among the propositions then submitted were the following:

"Section four, clause one, strike out the words, 'but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators.'

"Section fifth, clause one, amend the first part to read thus: 'Each State shall be the judge, according to its own laws, of the election of its Senators and Representatives to sit in Congress, and shall furnish them with sufficient credentials, but each House shall judge of the qualifications of its own members: a majority of each House shall constitute, &c.'"—*Page 790.*

"On the question, Shall the said propositions of amendments be referred to the consideration of a Committee of the Whole House? it was determined in the *negative*."—*Page 792.*

Thus failed the first effort of South Carolina to strike down the ultimate power of Congress over the elections of its own members by giving effect to the doctrine that the States had rights paramount to the General Government. But the champions of State rights had other efforts to make, and again attempted to restrict, that which they could not destroy, the power of Congress in this respect.

"A few days later, on the 21st of August, the constitutional amendments being again under consideration, Mr. Burke, of South Carolina, who I may remark in passing had voted in the South Carolina convention against the ratification of the Constitution, said:

"I move you, sir, to add to the articles of amendment the following:

"'Congress shall not alter, modify, or interfere in the times, places, or manner of holding elections of Senators or Representatives, *except when any State shall refuse, or neglect, or be unable, by invasion or rebellion, to make such election.*'

"Mr. Ames said he thought this one of the most unalienable of all the powers of Congress; it was essential to a body representing the whole community that they should have power to regulate their own elections in order to secure a representation from every part, and prevent any improper regulations, calculated to answer party purposes only. It is a solecism in politics to let others judge for them, and is a departure from the principles upon which the Constitution was founded."

"Mr. Madison. If this amendment had been proposed at any time, either in Committee of the Whole or separately in the House, I should not have objected to the discussion of it. But I cannot agree to delay the amendments now agreed upon, by entering into the consideration of propositions not likely to obtain the consent of either two thirds of this House or three fourths of the State Legislatures. I have considered this subject with some degree of attention, and, upon the whole, *am inclined to think the Constitution stands very well as it is.*"

"Mr. Sawyer, of South Carolina, said he hoped it would be agreed to, that eight States had expressed their desires on this head, and all of them wished the *General Government to relinquish their control over the elections.* The eight States he alluded to were New Hampshire, Massachusetts, New York, Pennsylvania, Maryland, Virginia, North Carolina, and South Carolina.

"Mr. Carroll denied that Maryland had expressed the desire attributed to her.

"Mr. Fitzsimons. The remark was not just as it respected Pennsylvania."

"Mr. Sedgwick, of Massachusetts, moved to amend the motion by giving this power to Congress to alter the times, manner, and places of holding elections, provided the States made improper ones, for as much injury might result to the Union from improper regulations as from a neglect, or a refusal to make any. It is as much to be apprehended that the States may abuse their power as that the United States may make an improper use of theirs.

"Mr. Ames said that inadequate regulations were equally injurious as having none, and that such an amendment as was now proposed would alter the Constitution. It would vest the supreme authority in places where it was never contemplated.

"Mr. Sherman observed that the Convention were very sensible of the danger that lay on both sides, and endeavored to guard against it. [illegible]

"Mr. Madison was willing to make every amendment that was required by the States which did not *tend to destroy the principles and the efficacy of the Constitution*; he conceived that the proposed amendment would have that tendency. [illegible]

"Mr. Tucker objected to Mr. Burke's motion for amendment, because it had a tendency to defeat the object of the proposition intended to be laid by this House. Mr. Burke had remarked, he argued, that he had known the Legislature of [illegible] law which the people [illegible] *themselves to suppose* [illegible] *without the evidence of* [illegible]

"Mr. Goodhue hoped the amendment never would obtain." [illegible] "Rather than the amendment should take effect he would vote against all that had been agreed to. *His greatest apprehensions were that the State governments would oppose and thwart the general one in such a degree as finally to overturn it.* Now, to a part against this evil, he wished the Federal Government to possess every power necessary to its existence.

"Mr. Burke. I believe that many of those gentlemen who agreed to the ratification without amendments did it from principles of patriotism, but they knew at the same time that they parted with those liberties; yet they had such reliance on the virtues of future Congress that they did not hesitate, expecting that they would be restored to them unimpaired as soon as the Government commenced its operations conformably to what was manifestly understood at the sealing and delivering up of those instruments.

"'It has been supposed that there is no danger to be apprehended from the General Government of an invasion of the rights of election.' I will remind gentlemen of an instance in the Government of Holland. The patriots in that country fought on less disadvantageous ground for that prize than the people of America, yet by giving to the States general powers, and omitting to insert in the Constitution some [illegible] tion was abolished. *This* [illegible] certain, and that they made as much talk about its importance as we do; but now the right has ceased, all vacancies are filled by the men in power. It is our duty, therefore, to prevent our liberties from being fooled away in a similar manner.

"Mr. Madison observed that it was the State governments in the seven united provinces which had assumed to themselves the power of filling vacancies, and not the General Government; therefore the gentleman's application did not hold.

"The question on Mr. Sedgwick's motion was lost, for Mr. Burke's proposition, [illegible] 17, nays 34."—*Page 800.*

A vote was then taken by yeas and nays on Mr. Burke's motion, and resulted—yeas 26, nays 28. (Page 800.)

Among the members who voted on this question we find seven who had been members of the Convention that framed the Constitution. None of them, Mr. Elbridge Gerry voted for Mr. Burke's proposition; whereas Messrs. Carroll, Clymer, Fitzsimons, Gilman, Madison, and Sherman, voted in the negative.

I submit, Mr. Speaker, to the House and country whether the proceedings just reviewed do not show clearly that the First Congress

maintained, from the most elaborate discussion, the supervisory power of Congress over the suffrage regulations of the States, even as relates to the most numerous branches of the Legislature.

But the question received further illustration at the hands of the First Congress. By reference to the first volume of the Annals it will be found that, January 13, 1790,

"*Ordered*, That a committee be appointed to prepare and bring in a bill for establishing a uniform system of naturalization throughout the United States; and that Mr. Hartley of Pennsylvania, Mr. Page of South Carolina, and Mr. Moore of Virginia, be appointed a committee for that purpose."

On the 22d day of January—

"The House resolved into a Committee of the Whole on the bill establishing a uniform rule of naturalization, Mr. Parker in the chair. The first section enacted that all free white persons who have migrated into the United States, and shall, after a short residence therein, take an oath of allegiance, *and shall have resided two years in the United States*, shall be entitled to all the rights of citizenship, except being capable of holding offices under the State or National Government, [illegible] they are to enjoy [illegible]

The next day, February 4, the same bill being under consideration—

"Mr. Sumter, of South Carolina, thought the provisions of the bill establishing a uniform rule of naturalization unnecessary. The Constitution enacted that all free white persons who had migrated into the United States, and shall, after a short residence therein, take an oath of allegiance, *and have resided two years in the United States*, shall be entitled to all the rights of citizenship, except being capable of holding offices under the State or National Government. [illegible] Constitution, that [illegible] General Government has no right to [illegible]

Gentlemen ask why, if that power exists, it has not been exercised. The answer is at any time precludes an elaborate reply, but I may allow [illegible] to the fact that the State Conventions [illegible] Congress to secure [illegible]

consideration to deprive Congress of the ultimate control over elections in the States having so signally failed, the advocates of State rights resorted to popular expedients by which they hoped to overthrow that which they had been unable to undermine. They appealed to the passions and pride of the people and excited the fears of the slaveholders throughout the country, and succeeded in imbuing the controlling minds of the country with the pernicious doctrines set forth in the Kentucky and Virginia resolutions of 1798.

Mr. WRIGHT. I desire to ask the gentleman a question. He has spoken of James Madison and of the resolutions of 1798. I would ask him whether those resolutions of 1798 were not in affirmation of State rights, and as such contrary to the doctrine that the gentleman is insisting upon to-day?

Mr. KELLEY. As my time is inflexibly limited by the courtesy of the gentleman from New York [Mr. HALE] I cannot stop to answer a side question.

Mr. WRIGHT. Proceed, sir.

Mr. KELLEY. Mr. Speaker, so successful were the labors of those who had determined from the first to prevent the formation of a perfect Union, and of whom thoroughly was the spirit of State rights infused into the political philosophy of that day, that in 1807 we find a Representative from Virginia, who was too well informed and too frank and courageous to deny that what I claim had been put into the Constitution was there, declaring in the national House of Representatives that the controlling power of Congress over elections in the States had become a dead letter, because it had not by its first exercise annihilated it. I speak of John Randolph, of Roanoke.

The following paragraphs are from a debate, November 12, 1807, on the contested election case of Barney vs. Geery, and will be found in the Annals of Congress, Tenth Congress, first session, page 857.

Mr. Fay, of Vermont, (subsequently a judge of the supreme court of that State,) said that—

"There was one part of the Constitution applicable to this present discussion which had not been noticed. He alluded to the fourth section of the first article. The times, place and manner, &c. Mr. Fay could call on the gentleman from Virginia, (Mr. Randolph,) who had so ably defended the right of the States, if the power of Congress was not equal and concurrent with that of the States. Congress might alter [illegible] regulations of elections so far as respected the time and place. The word 'manner' contained in the power. If the gentleman contended that the States had a right to the qualifications, he must also admit that Congress had the same right."

Mr. Randolph, of Virginia, said in reply:

"The gentleman from Vermont has quoted a part of the Constitution which had nothing to do with this subject—which, so far, in this case, makes neither for nor against the claim of [illegible] from Virginia. [illegible] Constitution, that part which was intended for the protection of the States as if especially delegated by the Constitution itself."

Sir, may I not ask whether the war just closed has not demonstrated the falsity of the doctrine that essential powers of the Government may die in consequence of their non-exercise for a term of years? The war against the rebellion called into energetic activity vital powers of the Government that had lain dormant since the adoption of the Constitution because they had never been called into action by the exigency against which they were ordained to provide. Sir, to the great authorities I have invoked I add one more. To name him will doubtless surprise the House. Whatever you may think of his patriotism, none will deny John C. Calhoun's familiarity with the phraseology or history of the Government; and in a speech in the Senate, April 2, 1848, on the bill for the admission of Oregon, he said:

"Whatever difference of opinion there may be as to what other rights appertain to citizens, all must at least agree that they have a right to petition and also to claim the protection of the Government. The very [illegible] long to him as a member of the body politic, and the possession of them is the primary object of the lower condition from which he has emerged. To suppose [illegible] or, to present the question more specially, can confer on him [illegible] States, would signify the absurdity of giving him a direct and immediate control over the acting of the General Government, from which he has no right to claim protection, and to which he has no right to present a petition. That the full force of this absurdity [illegible] of the General Government [illegible] States. The Constitution wisely provides that the voters for the most numerous branch of the Legislature in the several States shall be voters for the members of the House of Representatives."

The reference to this clause of the Constitution shows that its provisions were distinctly before the mind of Calhoun when he denied the unlimited control of the State over the right of suffrage.

"And as the members of that body [the Senate] are

with due respect to the gentleman I must under the control of the gentleman from New York [Mr. HALE] decline to yield. I was remarking that the gentleman from New Jersey had appealed to my distinguished colleague who is on the Judiciary Committee [Mr. WILLIAMS] to say whether the right of suffrage is not property. As my colleague did not reply, I had, sir, the curiosity to ask him to favor me with his answer to that question in writing. I have it and will take the liberty of quoting it. He says:

"If I had thought it worth while I would have said that it was not so *technically*, although it might be so *etymologically*, looking to the derivation of the word from the Latin *proprius*, which signifies that which is a man's own. I might have added that it was so *democratically*, in view of the fact that the right in question had been dealt with by that party as an article of merchandise.

"Assuming his idea to be correct, however, I would have proposed the question, how then, in view of the constitutional provision, which is, by the way, but a translation of Magna Charta, that 'no *person* shall be deprived of life, liberty, or property, without due process of law,' is the negro or any other person to be deprived of this right by State legislation? And how, also, in view of the other provision 'that private property shall not be taken for public use without just compensation,' we are to find a measure of value for determining the amount of damage involved in the divestiture of a right that is inherent, inalienable, and inappreciable?"

I assume the proposition of the gentleman from New Jersey to be correct, and add that the right of franchise is not only property but to the American citizen, the dearest property he owns, and to the poor, humble, powerless man, the most valuable and sacred of his possessions. To such the proposed amendment is intended to secure it. It provides that—

"The Congress shall have power to make all laws which shall be necessary and proper to secure to the citizens of each State all privileges and immunities of citizens in the several States, and to all persons in the several States equal protection in the rights of life, liberty, and property."

In conclusion, Mr. Speaker, I repeat that I hold that all the power this amendment will give is already in the Constitution. I admit that it has lain dormant. I admit that there has been raised over it a superincumbent mass of State and political usage and judicial decisions and that it is mountain high; but when I remember the mass of judicial decisions, of State and political usage, which was swept away by the decision of Judge Taney's court that the Missouri compromise was unconstitutional, I am persuaded that it will yet be quickened and called into action. The aroused people will demand that all the powers of the Constitution be exercised so that each State shall be guaranteed a republican government, and that the citizens of each State shall enjoy peaceably the privileges and immunities of citizenship in the respective States; but as some gentlemen question the existence of the power, and others the propriety of exercising it at this time, I hope we will submit this amendment to the people that they may more explicitly empower Congress to enforce and maintain that right, throughout the length of our wide-spread country.