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TERMS:—\$2 00 Per Annum, if paid in advance

VOL. XXXIII.—WHOLE NO. 1928.

CLEARFIELD, PA., WEDNESDAY, SEPTEMBER 26, 1866.

NEW SERIES—VOL. VII.—NO. 11.

CONSTITUTIONAL AMENDMENT.

SPEECH OF SENATOR COWAN,

At LAYTON, PA., SEPT. 11, 1866.

The following is that part of Senator Cowan's speech, which gives his views of the proposed amendment to the Constitution. Read it:

SECTION FIRST.

The first section of the amendment, by many, considered very material, although it is easy to conceive a case in which it might work great mischief by compelling the inhabitants of a State to suffer themselves to be overrun by a totally different set of people, which for their own safety they might wish to expel—as, for instance, if the people of California should find it necessary to expel the Chinese. This provision would prevent them from doing so, as to all that race born in the United States. Again, a State might find it necessary to abridge the privileges and immunities of some of its people for the sake of equality, as has happened very often in history. Utah might wish to abolish Polygamy when she becomes a State; yet if that should be declared by Congress one of the privileges or immunities of citizens of the United States, her power over the subject would be gone and she could not regulate this domestic institution as she will, as is the admitted right of all the States as the Constitution now stands.

Lastly, it will be claimed, under its clause, that Congress will have the right to define and fix what are the privileges and immunities of citizens of the United States, and in that case they may include the right of suffrage among the privileges, and thus force negro suffrage throughout the Union by a mere majority—which could be fatal to the Republic.

SECTION SECOND.

This second section is a violation of the fundamental principles of the government of the United States, and calculated to change its character entirely. When the Constitution was formed, it was intended to confer upon the General Government only such powers as were necessary to enable it to govern in all matters of general interest to the whole, reserving those which the States might regulate for themselves by their separate action.

The right to make war and peace—establish post offices—make uniform rules, for naturalization and bankruptcy—regulate commerce with foreign nations, and between the States—and settle difficulties between States and the citizens of different States, being in the nature general, are instances of these powers. But the Constitution in no case gives the Federal Government any authority to interfere in State affairs, where the State itself could regulate them, without affecting any but its own people.

Thus slavery was left with the States, because no matter what action the State took upon it, such action was not felt beyond its own people, or outside of its own boundaries, and so, too, of a thousand other things; especially, that of the right of suffrage which each State was left to regulate for itself, and which it could thus regulate without in any way affecting its sister States.

Now, if this amendment is adopted, the right of suffrage will be given over to the Federal Government—not directly it is true, but indirectly, and with the same effect as though it were. It declares that whenever any State denies to any of the male citizens of the United States, being 21 years of age, the right to vote, that then the power of that State, in the Union, should be diminished in proportion to the number of voters so excluded. That is, Pennsylvania has now 600,000 adult males over 21, and she has 25,000 members of Congress, or one for every 25,000. But if we suppose that she has 25,000 male negroes of the required age, and to whom they will not allow votes, then she will be obliged to accept one member of Congress, less, or else change her constitution so as to allow the negroes to vote. That is the alternative presented to Pennsylvania. Either let the negroes vote, or else lose a member of Congress as the penalty—that is all of it. But it goes much farther in the Southern States. They would all lose heavily—some, indeed, would have to give up one-half of their members in the House of Representatives. But the worst part of it is, too, that the operation of this section is not only equal in all the States, but is absolutely unjust to some, in order that others may profit by it. In all the Northern States which have few or no negroes, they run no risk, and cannot lose, but they gain in power just as the others are deprived of it. This is the secret of their anxiety for its success.

But if we maintain our old opinions, which have been held by all parties in all the States of the Union heretofore (and in no one of which is "manhood suffrage" pure and simple, allowed)—that the power to say who shall cast its ballots is the essence of State freedom, then this section becomes an insult to us. It says to all the people of all the States, "You have thought it unsafe to give to all your male citizens an equal right with you in Government affairs—you thought it dangerous. Now, however, you must give up that opinion and encounter that danger. Why? In order that we who admit all may have more power, and that you may have less, and more danger." That is just what it comes to. Georgia and Mississippi say to us, that it would ruin them to let negroes vote. New England says, "you need not let them vote; we care nothing for that; but if you do not, let us have half your members of Congress."

And that is true. New England politicians care no more about negroes than Pennsylvanians; but they know how to trade in him, and he constitutes to-day the great bulk of their political capital. In this very proposition they give him over wholly to the other States, if the latter will not count him in the basis of representation. "You may have the negroes, do with them as you please, but we want more members of Congress; or, what is the same thing, that you should have fewer." This is the language of this section of the amendment.

I have said that all this is a departure from the original intention of the founders of the Union, which, as far as possible, was to preserve the freedom of the States, and leave to their people the right to adjust their internal affairs in their own way. It was in that spirit, too, that the Constitution provides that the "United States shall guarantee to each State a Republican form of Government;" or, in other words, the "United States guarantee to each State the right to establish its own Government;" and Mr. Madison says this was what was meant by the phrase, "Republican form of Government."

Now, if the people of a State have the right to form their own State governments, it is not easy to see how they can do so, if some body outside the State can dictate to them who shall vote or who not vote. It were useless to say to them, you shall elect your own State officers, but we must provide who shall cast the ballots. The people might well answer, "if you dictate the voters, the voters will elect the officers, so that you really dictate both." That is not freedom.

Each State then, if free, has the right to say who shall vote, and if it is not the right, then the Union, instead of being a Union of States, becomes a Consolidated Government, and the whole power must eventually concentrate in the Federal centre at Washington.

Lastly, it is argued that this section is necessary to equalize the power of voters North and South, which is as contemptible a sophism as ever was hatched in the brain of a demagogue. The power of a voter, like that of an officer in any State, is precisely what the Constitution and laws of the State confer and, no more, and if one State chooses to limit the number of both, and thus increase the deposit of power in their hands, upon what rational ground can the people of other States complain? Power resides in the people, and Pennsylvania, having 21 times as many people as Massachusetts, she has two and a half times as much power as Massachusetts. Now the Legislature of the latter State consists of 600 members, and that of Pennsylvania only of 133. Therefore one of these 133 wield 10 times the power that one of the 600 does, and yet nobody ever heard Massachusetts complain of this. If she did she would be reckoned a fool, and laughed at for her pains, simply because it cannot affect her in any possible way, and Pennsylvania would have the same right to ask her to reduce her Legislature that she would to ask us to increase ours. So it is with voters, and to put the argument for the amendment on that ground is absurd, and only shows its weakness. No one State or number of States has a right to intermeddle with the elective franchise in other States, as it cannot affect them; but, if they were to interfere at all, one would think it more wise if they were to protest against negro suffrage than seek to enforce it. Surely no wise man can believe that the ballot box would be purer or safer if the negroes put votes in it, and especially the negroes of the South, just emerged from slavery. And yet this is gravely argued; but it is by the very same men who say that the con-

dition of the Freedmen is such that they must be put under the control and guardianship of the Freedmen's Bureau, to make bargains for them and attend to their affairs generally. And these are the free and independent voters whose virtue and intelligence are relied upon to maintain and perpetuate our institutions!!! Is it possible that human folly can go beyond this? I remember when it was the universal sentiment with us, that we, the people of the United States, were the only people with whom a republic like ours was possible. It had failed in England, in France, and indeed everywhere, but here we could maintain it. Now, it is proposed to put it at the mercy of the negroes—the wards of the Freedmen's Bureau!!!

I have said that the power of a State depended upon the number of its people, and not upon the number of voters. How many men can it bring into the field to defend the country? How many heads has it upon whom taxes can be levied? What share of the public burdens can it bear? These are the true tests of the share it ought to have in the government of the Union; but this amendment ignores all these, and while it proposes to diminish the political power of some States, yet it does not propose to diminish their political burdens in the same proportion. When a draft is ordered to fill up the ranks of our armies, the people will still remain the basis, and not the voters; so when direct and capitation taxes are levied, they will count the whole population, and not a part of it. Thus you see a Southern State will have to bear as many governmental burdens as she now does, and yet she may be deprived of half her governmental power, which changes the whole nature of our system. It may be said that this can all be avoiced by giving the negroes suffrage. True, but that is just what the State thinks it cannot do without ruin. Why then should we, outside the State, seek to compel it to run any such risk, or encounter any such danger?

THIRD SECTION.

The next and third section is equally a violation of the whole spirit of our Constitution. According to it no man could be punished for any offence, no matter what—by the legislative department of the Government, because "bills of attainder" and "bills of pains and penalties" are forbidden in it. Nay, it even goes farther, and declares that "no ex post facto" law shall be passed, so that no man could be made to suffer any penalty not prescribed by law as due to his offence before it was committed. This is the Constitution as it now stands, and in view of the barrier it presents, the Congress propose to override its principles and nullify its provisions by publishing all those in the South, who, after having at any previous time taken an oath to support the Constitution of the United States, voluntarily engaged in rebellion, by declaring them "ineligible to office under either the Federal or State governments. In other words, this section is a "bill of pains and penalties," and *ex post facto* law—both in one—which is intended to inflict a new punishment on all the principal men of the South for the part they took in the Rebellion, and that without providing any mode of trial or means of escape, except by a two-thirds vote of Congress removing the disability.

It is impossible for one not well acquainted with the result of measures similar to this in other countries, to estimate the probable amount of mischief it might do in this instance. To ostracise and proscribe the leading men of a population numbering millions, just at the time when we want to reconcile and unite them with us in the bonds of loyal citizenship, is surely one of the most rash and dangerous proceedings imaginable, and would, beyond any doubt, sow the seeds of another and much more formidable rebellion than the one which we have just suppressed. Not only those under the ban would resent it, but all connected with them in any way, by blood or friendship, would become our implacable enemies, and seek the first opportunity for vengeance in our ever-shifting condition of parties. Can any one believe that in time, these men, bound together by the ties of a common indignity, would not form themselves into a party which would never tire or sleep until they had wiped away the stigma, and made those who inflicted it, repeat that their desire for punishment had overcome their better judgment? Let history answer. It has been so always.

We have made a great war—one of the most terrible the world has ever seen—to support and maintain the binding authority of our present Constitution. We have bapised it in the blood of half a million of our citizens

on both sides, North and South, and now, when it has come out unscathed from that fiery ordeal, I am for standing by it as it is—first last and all the time. It secured us peace, progress and tranquillity for three quarters of a century—not a difficulty or a drawback all that time, save one, to mar our wonderful career. That one cause of desecration, "African Slavery," is now abolished, and there is nothing really left to make one man differ from another, from one end to the other of the Union. That bond and bargain which held us so long with slavery, ought certainly to be good to hold us now, that slavery is numbered with the things that were.

I may say also to you, that these amendments are a mere contrivance on the part of politicians to deceive the country—that they are not received with favor by the earnest men of either party, whether radical or conservative. Charles Sumner is not more friendly to them to-day than I am, and that I know. He will not deny it.

Let me explain. I have great respect for an honest radical in this contest. I understand him, I know what he wants, and where to meet him. He frankly avows his policy, and however much I may think him mistaken, I cannot refrain from according to him the meed of honesty and manliness. He starts out with the idea that all men are equal, and that the negro is just as much entitled to his share in the government of the country as he is entitled to be paid for his day's labor after he has performed it. He believes the negro ought to have a vote, just as he ought to have a challenge to the jury who is to try him for his life. This is radical ground, and I say I respect—I understand it; but you will perceive these Constitutional amendments don't cover that ground. Indeed, they abandon it, and trade it off for a consideration. They do not ask for equal political rights for the negro—they do not insist on his right to suffrage—but they propose to sell him to the white man in this respect, provided the latter will agree to yield up their political power in proportion as it is based on their negro population. How this would benefit the negro no one can explain; but anybody may see that it would not incline the people of the Southern States to treat him better than they now do. May they not look upon him as the cause of this new humiliation, and visit upon him that indignation which his half-hearted friends really deserve? This is why true radicals oppose it, and stigmatize it as an abandonment of the negro to his fate, in order to deprive the Southern States of a few members of Congress.

Nor are the authors of it anxious for its success. With no love for the negro, they offer this as a sop to the abolitionists, and expect, by means of it, to keep them quiet till after the election. The heads of these men are cool enough besides, to know that there is not compensation enough in it to justify them in the risks they run in destroying the freedom of the States, and in consolidating power over them in the Federal Government. It is an invention that may be made to plague the inventors, and a petard that might burst its own engineers. If twenty seven States can deprive nine States of one-half their members of Congress by amending the Constitution, the same number of States might deprive New England of one-half her Senators; and this is made possible whenever the precedent is set, that an amendment can be made which is not only in harmony with, but directly contrary to the original instrument itself. If you change the basis of representation, pass bills of attainder and *ex post facto* laws, you can do anything. Such changes are not amendments at all—they are really violations attempted under cover of a power to amend, and if successful, the instrument becomes the sport of faction, loses all efficacy, and is not worth the paper upon which it is written.

I think the proceedings of the late Convention at Philadelphia, called, by way of eminence, the Loyal Southern Union Convention, ought to open the eyes of the people as to the true nature of the issues involved in the next elections. Surely no such body has ever met in the world before, or one which exposed its nakedness more plainly than this. All the bedlams of the country seemed to be let loose in it. Ye Gods! if the spirits of Washington, Franklin, Madison, Adams, Hamilton and Jefferson were permitted to look in upon it, what must they have thought. To have seen a parcel of refuse babblers from the South, of no importance at any time, and less now, pleading for justice to the negro, for his right to suffrage, in order to give them a constituency, when it is notorious than nine out of ten of these

fellows were, a few years ago, the most violent of slavery propagandists. If they are representative men of the South, where were they before the war? What did they do to arrest its progress? Whoever heard of any of them until the rebellion spued them out as the exponents of its rascality? They were not trusted on its side, and they came over to ours, is their history; and now they openly confess that the only chance they have for fame or fortune, is in negro suffrage. They do not pretend that any white men confide in them, but they say the negroes will. *Quere de hoc*, as the lawyers say, question as to this. I am afraid that the man who loses the confidence of his white fellow-citizens would soon lose that of the negroes. The latter can tell a gentleman as quickly as anybody, and you could no more cheat him with your Browns and Hamiltons than you could cheat the Ladies of Paris, or those of Latrobe with them. Their cry, however, was "Negro suffrage," from first to last; but their Northern allies were obdurate, and the despairing wail of these philanthropic statesmen died away on their ears without reaching their hearts. They wouldn't make that an issue.

The question of punishing people who engage in a rebellion is not well understood in this country. We are apt to forget that our system of Government is double in its nature—that there are two powers our people are bound to obey, that is that is *Federal and State Governments*—each has its separate claim to our allegiance, and the claim of each within its sphere is equally valid. Now, suppose a conflict upon a question about which even lawyers have different opinions—how are laymen to decide? Are they to be punished because they mistake, and be hanged for treason in doing what they think they are right in doing? Every one answers "No," of course, but how few reflect that this was just the dilemma in which the Southern man was placed in 1861. His State commanded him to secede—the United States commanded him to refuse. Which was he to obey? The law here comes to relieve him and says, "obey the one who can protect you for the time being." Or, in other words, "obey the Government, which, in fact, has the power over you, and even if wrong you shall not be deemed guilty of crime." This, I think, was the law in all times, and with all nations—why not? Is it not reason?

Now, apply this: In 1861 South Carolina called upon her people to secede. If they refused, they could only do so, relying on the United States for protection. Where was the United States at that time? Could they protect the citizen in his refusal, or not? Let the fact answer.—They could not, or did not, for the only force they had was in Fort Sumter, and so far from being able to protect the people, it could not protect itself, and was obliged, afterwards, to surrender to the State. What then was the citizen to do? Was he expected to be stronger than the United States? Certainly not. He was expected to obey the Government over him, which has the power to enforce obedience. This is common sense—anything else is folly.

The State then having power over him, he engaged in the rebellion. *Did he do it voluntarily?* is the question put by the amendment. I answer that is not the true question. *Could he help himself?* is far better. Well, suppose he thought he could not help it, and went in. Was that a crime? Clearly not, and no court would say so, although to all appearance he went in voluntarily. This amendment may punish him, and so far is unjust and unlawful. Let us hear him first. Let this amendment be adopted; then farewell to peace and union. We have planted enemies in every neighborhood, village and hamlet all over the South. They are the leading men—they are persecuted into despair—they have nothing to hope for from a Government which refuses them a trial by law, or a chance for defence; but, on the other hand, at one fell stroke, the whole mass of them are forever shut out and secluded from all the honor and rewards of the country, covered with lasting disgrace and shame, and made, in this way, ready to revolt against us on all occasions.

Suppose then we were engaged in a foreign war—which side would they take? Which side does the amendment invite them to take? Surely not ours, and then comes the penalty. They would be strength to our enemies, and weakness and danger to us, and perhaps lose us the one-half the Union. Let us then pause, my countrymen, before we lend ourselves to such extreme folly. Let us be warned by

the history of Ireland—of the Netherlands—of Poland—of Hungary—indeed, of all countries where measures not the one hundredth part as severe as this, have been resorted to with such disastrous effects to the conquerors. An error of this kind would, sooner or later, be fatal to the destinies of the great Republic.

FOURTH SECTION.

I now come to the last section, which declares the validity of the public debt shall not be questioned, and that the debt of the Rebellion shall not be assumed. Now, when we consider that the obligation to pay the national debt is the highest and most sacred known among men—that it reposes upon the honor and faith of the United States, we cannot fail to be struck with this provision. Why is it put there? Has any body except its authors ever dared to question the validity of this obligation? And is any bondholder fool enough to suppose that this amendment will add to its strength, or that it could not be repudiated just as well over the new, as the old Constitution? Surely all leaders ought to know that much. What is there here to compel Congress to impose taxes, or to compel the people to pay them, more than at present exists? If they could violate the honor of the nation in one case, why not in the other? The truth is, that this amendment is the worst blow our credit has received since the war ended—it admits a doubt of our integrity and honesty, which is the scorn of every American gentleman, and is a low, vulgar piece of clap-trap to alarm misers and fools into the belief that their bonds are in danger, and is only worthy of a sharper who wants to buy them at a discount. It is about the same as though it had been provided, that before we resume specie payments, all the coin in the country should be scoured, and is equally ridiculous.

The next clause, that the rebel debt shall not be assumed, is fellow to the other, and alike significant of the folly and fraud of those who framed it. After hinting that there was danger that we would not pay what we were solemnly bound to pay, it is next very properly insinuated that there is danger that we may pay that which nobody in the world thinks we ought to pay, or have any right to pay. Is any man serious in supposing the American people would repudiate their own debt, and pay that of the Confederate States? If there is such an one, he is out of the pale of reason, and ought to be let alone.

Now, fellow-citizens, I have reviewed these proposed amendments to the Constitution, and which are paraded as the platform of the great Republican party of this country. I think I hazard nothing in saying that they never will be adopted and become a part of the Constitution of the United States. God forbid that that great, sublime and glorious instrument, which embodies in itself all that is good and wise of the world's political experience in the past, should ever be encumbered with such absurd and wicked conditions as these are, and which we should all repent of when too late.

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