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VETO

Of the Bill to establish Negro Suffrage in the District of Columbia.

To the Senate of the United States:

I have received and considered a bill entitled "An act to regulate the elective franchise in the District of Columbia," passed by the Senate on the 13th of December, and by the House of Representatives on the succeeding day. It was presented for my approval on the 26th ultimo—six days after the adjournment of Congress—and is now returned with my objections, to the Senate, in which House it originated.

Measures having been introduced at the commencement of the first session of the present Congress for the extension of the elective franchise to persons of color in the District of Columbia, steps were taken by the corporate authorities of Washington and Georgetown, to ascertain and make known the opinion of the people of the two cities upon a subject so immediately affecting their welfare as a community.

The question was submitted to the people at special elections, held in the month of December, 1865, when the qualified voters of Washington and Georgetown, with great unanimity of sentiment, expressed themselves opposed to the contemplated legislation.

In Washington, in a vote of 6556—the largest, with but two exceptions, ever polled in that city—only 35 ballots were cast for negro suffrage; while in Georgetown, in an aggregate of 813 votes—a number considerably in excess of the average vote at the four preceding annual elections—but one was given in favor of the proposed extension of the elective franchise.

As these elections seem to have been conducted with entire fairness, the result must be accepted as a truthful expression of the opinion of the people of the District upon the question which evoked it. Possessing, as an organized community, the same popular right as the inhabitants of a State or Territory, to make known their will upon matters which affect their social and political condition, they could have selected no more appropriate mode of memorializing Congress upon the subject of this bill than through the suffrages of their qualified voters.

Entirely disregarding the wishes of the people of the District of Columbia, Congress has deemed it right and expedient to pass the measure now submitted for my signature. It therefore becomes the duty of the Executive, standing between the legislation of the one and the will of the other, fairly expressed, to determine whether he should approve the bill, and thus aid in placing upon the statute books of the nation a law against which the people to whom it is to apply have solemnly and with such unanimity protested, or whether he should return it with his objections, in the hope that, upon reconsideration, Congress, acting as the representatives of the inhabitants of the seat of government, will permit them to regulate a purely local question, as to them may seem best suited to their interests and condition.

The District of Columbia was ceded to the United States by Maryland and Virginia, in order that it might become the permanent seat of government of the U. States. Accepted by Congress, it at once became subject to the "exclusive legislation" for which provision is made in the Federal Constitution. It should be borne in mind, however, that in exercising its functions as the law-making power of the District of Columbia, the authority of the national legislature is not without limit, but that Congress is bound to observe the letter and spirit of the Constitution, as well in the enactment of local laws for the seat of government, as in legislation common to the entire Union.

Were it to be admitted that the right "to exercise exclusive legislation in all cases whatsoever," conferred upon Congress unlimited power within the District of Columbia, titles of nobility might be granted within its boundaries; laws might be made "respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances." Despotism would thus rule at the seat of government of a free republic, and as a place of permanent residence, it would be avoided by all who prefer the blessings of liberty to the mere emoluments of official position.

It should also be remembered that in legislating for the District of Columbia, under the Federal Constitution, the relation of Congress to its inhabitants is analagous to that of a Legislature to the people of a State, under their own local Constitution. It does not, therefore, seem to be asking too much that, in matters pertaining to the District, Congress should have a like respect for the will and interests of its inhabitants as is entertained by a State Legislature for the wishes and prosperity of those for whom they legislate. The spirit of our Constitution, and the genius of our government require that, in regard to any law which is to affect and have a permanent bearing upon a people, their will should exert at least a reasonable influence upon those who are acting in the capacity of their legislators.

Would, for instance, the Legislature of the state of New York, or of Pennsylvania, or of Indiana, or of any State in the Union, in opposition to the expressed will of a large majority of the people whom they were chosen to represent, arbitrarily force upon them, as voters, all persons of the African or negro race, and make them eligible for office, without any other qualification than a certain term of residence within the State? In neither of the States named would the colored population, when acting together, be able to produce any great social or political result. Yet in New York, before he can vote, the man of color must fulfill conditions that are not required of the white citizen; in Pennsylvania the elective franchise is restricted to white freemen; while in Indiana negroes and mulattoes are expressly excluded from the right of suffrage.

It hardly seems consistent with the principles of right and justice that representatives from states where suffrage is either denied the colored man, or granted him on qualifications requiring intelligence or property, should compel the people of the District of Columbia to try an experiment which their own constituents have thus far shown an unwillingness to test for themselves. Nor does it accord with our republican ideas that the principle of self-government should lose its force when applied to the residents of the District, merely because their legislators are not, like those of the States, responsible, through the ballot, to the people for whom they are the law-making power.

The great object of placing the seat of government under the exclusive legislation of Congress was to secure the entire independence of the General Government from undue State influence, and to enable it to discharge, without danger of interruption or infringement of its authority, the high functions for which it was created by the people.

For this important purpose it was ceded to the United States by Maryland and Virginia, and it certainly never could have been contemplated, as one of the objects to be attained by placing it under the exclusive jurisdiction of Congress, that it would afford to propagandists of political parties a place for an experimental test of their principles and theories.

While, indeed, the residents of the seat of government are not, citizens of any State, and are not, therefore, allowed a voice in the electoral college, or representation in the councils of the nation, they are, nevertheless, American citizens, entitled as such to every guarantee of the Constitution, to every benefit of the laws, and to every right which pertains to the citizens of our common country.

In all matters then affecting their domestic affairs, the spirit of our democratic form of government demands that their wishes should be consulted and respected, and they taught to feel that, although not permitted practically to participate in national concerns, they are nevertheless under a paternal government, regardful of their rights, mindful of their wants, and solicitous for their prosperity. It was evidently contemplated that all local questions would be left to their decision, at least to an extent that would not be incompatible with the object for which Congress was granted exclusive legislation over the seat of government.

When the Constitution was yet under consideration, it was assumed by Mr. Madison that its inhabitants would be allowed "municipal legislature for local purposes, derived from their own suffrages."

When for the first time, Congress, in the year 1800, assembled at Washington, President Adams, in his speech at its opening, reminded the two houses that it was for them to consider whether the local powers of the District of Columbia, vested by the Constitution in the Congress of the United States, should be immediately exercised, and he asked them to "consider it as the capital of a great nation, advancing with unexampled rapidity in arts, in commerce, in wealth, and in population, and possessing within itself those resources which, if not thrown away or lamentably misdirected, would secure to it a long course of prosperity and self-government." Three years had elapsed when Congress was called upon to determine the propriety of retroceding to Maryland and Virginia the jurisdiction of the territory which they had respectively relinquished to the government of the United States. It was urged on the one hand, that exclusive jurisdiction was not useful or necessary to the government; that it deprived the inhabitants of the District of their political rights; that much of the time of Congress was consumed in legislation pertaining to it; that its government was expensive; that Congress was not competent to legislate for the District, because the members were strangers to its local concerns, and that it was an example of a government without representation—an experiment dangerous to the liberties of the States.

On the other hand it was held, among other reasons, and successfully, that the Constitution, the acts of cession of Virginia and Maryland, all contemplated the exercise of exclusive legislation by Congress, and that its usefulness, if not its necessity was inferred from the inconvenience which was felt for want of it by the Congress of the Confederation; that the people themselves, who, it was said, had been deprived of their political rights, had not complained, and did not desire a retrocession; that the evil might be remedied by giving them a representation in Congress when the District should become sufficiently populous, and in the meantime a local legislature; that if the inhabitants had not political rights, they had great political influence; that the trouble and expense of legislating for the District would not be great, but would diminish, and might in a great measure be avoided by a local legislature; and that Congress could not retrocede the inhabitants without their consent. Continuing to live substantially under the laws that existed at the time of the cession, and such changes only have been made as were suggested by themselves, the people of the District have sought, by a local legislature, that which has been generally conceded by the Congress of the nation.

As a general rule, sound policy requires that the legislature should yield to the wishes of a people, when not inconsistent with the Constitution and the laws. The measures suited to one community might not be well adapted to the condition of another; and the persons best qualified to determine such questions are to be directly affected by any proposed law. In Massachusetts, for instance, male persons are allowed to vote, without regard to color, provided they possess a certain degree of intelligence. In a population in that State of 1,231,066, there were, by the census of 1860, only 9602 persons of color; and of the males over twenty years of age, there were 339,086 white to 2602 colored. By the same official enumeration, there were in the District of Columbia 60,794 whites to 14,313 persons of the colored race.—Since then, however, the colored population of the District has largely increased, and it is estimated that at the present time there are nearly a hundred thousand whites to thirty thousand negroes.

The cause of the augmented number of the latter class needs no explanation.—The District during the war became a place of refuge for those who escaped from servitude, and it is yet the abiding place of a considerable portion of those who sought within its limits a shelter from bondage. Until then held in slavery, and denied all opportunities for mental culture, their first knowledge of government was acquired when, by conferring upon them freedom, it became the benefactor of their race; the test of their capability for improvement began when, for the first time, the career of free industry and the avenues to intelligence were opened to them. Possessing these advantages but a limited time, the greater number perhaps having entered the District of Columbia during the later years of the war, or since its termination, we may well pause to inquire whether, after so brief a probation, they are as a class capable of an intelligent exercise of the right of suffrage, and qualified to discharge the duties of official position. The people who are daily witnesses of their mode of living, and who have become familiar with their habits of thought, have expressed the opinion that they are not yet competent to serve as electors, and thus become eligible for office in the local governments under which they live.

Clothed with the elective franchise, their numbers, already largely in excess of the demand for labor, would be soon increased by an influx from the adjoining States. Drawn from fields where employment is abundant, they would in vain seek it here, and so add to the embarrassments already experienced from the large class of idle persons congregated in the District. Hardly yet capable of forming correct judgments upon the important questions that often make the issues of a political contest, they could readily be made subservient to the purposes of designing persons. While in Massachusetts, under the census of 1860, the proportion of white to colored males over twenty years of age was one hundred and thirty to one, here the black race constitute nearly one third of the entire population, whilst the same class surrounds the District on all sides, ready to change their residence at a moment's notice, and with all the facility of a nomadic people, in order to enjoy here, after a short residence, a privilege they find nowhere else. It is within their power, in one year, to come into the district in such numbers as to have the supreme control of the white race and to govern them by their own officers and by the exercise of all the municipal authority—among the rest, of the power of taxation over property in which they have no interest.

In Massachusetts, where they have enjoyed the benefits of a thorough educational system, a qualification of intelligence is required, while here suffrage is extended to all, without discrimination, as well to the most incapable, who can prove a residence in the District of one year, as to those persons of color who comparatively few in number, are permanent inhabitants, and having given evidence of merit and qualification, are recognized as useful and responsible members of the community. Imposed upon an unwilling people, placed by the Constitution under the exclusive legislation of Congress, it would be viewed as an arbitrary exercise of power, and as an indication by the country of the purpose of Congress to compel the acceptance of negro suffrage by the States. It would engender a feeling of opposition and hatred between the two races, which, becoming deep rooted and ineradicable, would prevent them from living together in a state of mutual friendliness. Carefully avoiding every measure that might tend to produce such a result, and following the clear and well ascertained popular will, we should assidiously endeavor to promote kindly relations between them, and thus when that popular will leads the way, prepare for the gradual and harmonious introduction of this new element into the political power of the country.

It cannot be urged that the proposed extension of suffrage in the District of Columbia is necessary to enable persons of color to protect either their interests or their rights. They stand here precisely as they stand in Pennsylvania, Ohio, and Indiana. Here, as elsewhere, in all that pertains to civil rights, there is nothing to distinguish this class of persons from citizens of the United States; for they possess the "full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by white citizens," and are made "subject to like punishment, pains and penalties, and to none other, any law, statute, ordinance, regulation or custom to the contrary notwithstanding." Nor, as has been assumed, are their suffrages necessary to aid a loyal sentiment here; for local governments already exist of undoubted fealty to the government, and are sustained by communities which were among the first to testify their devotion to the Union, and which, during the struggle, furnished their full quotas of men to the military service of the country.

The exercise of the elective franchise is the highest attribute of an American citizen, and, when guided by virtue, intelligence and patriotism, and a proper appreciation of our institutions, constitutes the true basis of a democratic form of government is lodged in the body of the people. Its influence for good necessarily depends upon the elevated character and patriotism of the elector, for if exercised by persons who do not justly estimate its value, and who are indifferent as to its results, it will only serve as a means of placing power in the hands of the unprincipled and ambitious, and must eventuate in the complete destruction of that liberty of which should be the most powerful conservator. Great danger, is, therefore, to be apprehended from an untimely extension of the elective franchise to any new class in our country, especially when the large majority of that class, in wielding the power thus placed in their hands, cannot be expected correctly to comprehend the duties and responsibilities which pertain to suffrage. Yesterday, as it were, four millions of persons were held in a condition of slavery, that had existed for generations; to day they are freemen, and are assumed by law to be citizens. It cannot be presumed, from their previous condition of servitude, that as a class, they are as well informed as to the nature of our Government as the intelligent foreigner who makes our land the home of his choice.

In the case of the latter neither a residence of five years, and the knowledge of our institutions which it gives, nor attachment to the principles of the Constitution, are the only conditions upon which he can be admitted to citizenship. He must prove, in addition, a good moral character, and thus give reasonable ground for the belief that he will be faithful to the obligations which he assumes as a citizen of the republic. Where a people—the source of all political power—speak, by their suffrages, through the instrumentality of the ballot box, it must be carefully guarded against the control of those who are corrupt in principle and enemies of free institutions; for it can only become to our political and social system a safe conductor of healthy popular sentiment when kept free from demoralizing influences. Controlled, through fraud and usurpation, by the designing, anarchy and despotism must inevitably follow. In the hands of the patriotic and worthy, our Government will be preserved upon the principles of the Constitution inherited from our fathers. It follows, therefore, that in admitting to the ballot box a new class of voters not qualified for the elective franchise, we weaken our system of government, instead of adding to its strength and durability.

In returning this bill to the Senate I deeply regret that there should be any conflict of opiaion between the Legislative and executive departments of the Government in regard to measures that vitality affect the prosperity and peace of the country. Sincerely desiring to reconcile the States with one another, and the whole people to the government of the United States, it has been my earnest wish to cooperate with Congress in all measures having for their object a proper and complete adjustment of the questions resulting from our late civil war. Harmony between the co ordinate branches of the Government, always necessary for the public welfare, was never more demanded than at the present time, and it will therefore be my constant aim to promote, as far as possible, concert of action between them. The differences of opinion that have already occurred have rendered me only the more cautious lest the Executive should encroach upon any of the prerogatives of Congress, or, by exceeding, in any manner, the constitutional limit of his duties, destroy the equilibrium which should exist between the several co ordinate departments, and which is so essential to the harmonious working of the Government. I know it has been urged that the executive Department is more likely to enlarge the sphere of its action than either of the other two branches of the Government, and especially in the exercise of the veto power conferred upon it by the Constitution.

It should be remembered, however, that this power is wholly negative and conservative in its character, and was intended to operate as a check upon unconstitutional, hasty and improvident legislation, and as a means of protection against invasions of the just powers of the Executive and Judicial Departments. It is remarked by Chancellor Kent, that "to enact laws is a transcendent power; and, if the body that possesses it be a full and equal representation of the people, there is danger of its pressing with destructive weight upon all the other parts of the machinery of government. It has, therefore, been thought necessary, by the most skillful and most experienced artists in the science of civil policy, that strong barriers should be erected for the protection and security of the other necessary powers of the Government. Nothing has been deemed more fit and expedient for the purpose than the provision that the head of the Executive Department should be so constituted as to secure a requisite share of independence, and that he should have a negative upon the passing of laws; and that the judiciary power, resting on a still more permanent basis, should have the right of determining upon the validity of laws by the standard of the Constitution."

The necessity of [illegible] reference to the most eminent writers upon our system of government, who seem to concur in the opinion that encroachments are most to be apprehended from the department in which all legislative powers are vested by the Constitution. Mr. Madison, in referring to the difficulty of providing some practical security for each against the invasion of the others, remarks that "the Legislative Department is every where extending the sphere of its activity, and drawing all power into its impetuous vortex." "The founders of our republics * * * seem never to have recollected the danger from legislative usurpations, which by assembling all power in the same hands, must lead to the same tyranny as is threatened by executive usurpations." In a representative Republic, where the Executive Magistracy is carefully limited, both in the extent and the duration of its power, and where the legislative power is exercised by an assembly which is inspired by a supposed influence over the people, with an intrepid confidence in its own strength; which is sufficiently numerous to feel all the passions which actuate a multitude, yet not so numerous as to be incapable of pursuing the objects of its passions by means which reason prescribes—it is against the enterprising ambition of this department that the people ought to indulge all their jealousy and exhaust all their precautions."

"The Legislative Department derives a superiority in our Government from other circumstances. Its constitutional powers being at once more extensive and less susceptible of precise limits, it can with the greater facility mask, under complicated and indirect measures, the encroachments which it makes on the co ordinate departments. On the other side, the executive power being restrained within a narrower compass, and being more simple in its nature, and the judiciary being described by landmarks still less uncertain, projects of usurpation by either of these departments would immediately betray and defeat themselves. Nor is this all; as the Legislative department alone has access to the pockets of the people, and has in some constitutions full discretion, and in all a prevailing influence over the pecuniary rewards of those who fill the other departments, a dependence is thus created in the latter which gives still greater facility to encroachments of the former. We have seen that the tendency of republican governments is to an aggrandizement of the legislative, at the expense of the other departments."

Mr. Jefferson, in referring to the early Constitution of Virginia, objected that by its provisions all the powers of government—legislative, executive and judicial—resulted to the legislative body, holding that "the concentrating these in the same hands is precisely the definition of despotic government. It will be no alleviation that these powers will be exercised by a plurality of hands, and not by a single one. One hundred and seventy three despots would surely be as oppressive as one. As little will it avail us that they are chosen by ourselves. An elective despotism was not the government we fought for, but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced among several bodies of magistracy as that no one could transcend their legal limits without being effectually checked and restrained by the others.

"For this reason that Convention which passed the ordinance of government laid its foundation on this basis, that the Legislative, executive and Judiciary Departments should be separate and distinct, so that no person should exercise the powers of more than one of them at the same time. But no barrier was provided between these several powers. The Judiciary and executive members were left dependent on the legislative for their subsistence in office, and some of them for their continuance in it. If, therefore, the Legislature assumes executive and Judiciary powers, no opposition is likely to be made nor, if made, can be effectual; because in that case they may put their proceedings into the form of act of assembly, which will render them obligatory on the other branches. They have accordingly, in many instances, decided rights which should have been left to judicial controversy; and the direction of the executive, during the whole time of their session, is becoming habitual and familiar."

Mr. Justice Story, in his commentaries on the Constitution, reviews the same subject, and says:—

"The truth is, that the legislative power is the great and overruling power in free Government." "The representatives of the people will watch with jealousy every encroachment of the executive Magistrate, for it trenches upon their own authority. But who shall watch the encroachments of these representatives themselves? Will they be as jealous of the exercise of power by themselves as by others?" "There are many reasons which may be assigned for the engrossing influence of the Legislative Department. In the first place, its constitutional powers are more extensive, and less capable of being brought within precise limits, than those of the either of the other departments. It reaches few objects, and those are known. It cannot transcend them without being brought in contact with the other departments. Laws may check, and restrain, and bind its exercise. The same remarks apply with still greater force to the Judiciary. The jurisdiction is, or may be bounded to a few objects or persons; for, however general and unlimited, its operations are necessarily confined to the mere administration of private and public justice. It cannot punish without law. It cannot create controversies to act upon. It can decide only upon rights and cases as they are brought by others before it. It can do nothing for itself. It must do everything for others. It must obey the laws; and if it corruptly administers them it is subject to the power of impeachment.

On the other hand, the legislative power, except in the few cases of constitutional prohibition, is unlimited. It is forever varying its means and its end. It governs the laws and institutions and public policy of the country. It regulates all its vast interests. It disposes of all its property. Look but at the exercise of two or three branches of its ordinary powers. It levies all taxes; it directs and appropriates all supplies; it gives the rules for the descent, distribution and devises of all property held by individuals. It controls the sources and resources of wealth. It changes at its will the whole fabric of the laws. It moulds at its pleasure almost all the institutions which give strength and comfort and dignity to society. In the next place it is the direct, visible representative of the will of the people in all the changes of time and circumstances.—It has the pride as well as the power of numbers. It is easily moved and steadily moved by the strong impulses of popular feeling and popular odium. It obeys, without reluctance, the wishes and the will of the majority for the time being.—The path to public favor lies open by such obedience; and it finds not only support but impunity in whatever measures the majority advises, even though they transcend the constitutional limits. It has no motive, therefore, to be jealous or scrupulous in its own use of power, and it finds its ambition stimulated and its arm strengthened by the countenance and the courage of numbers. These views are not alone those of men who look with apprehension upon the fate of republics, but they are also freely admitted by some of the strongest advocates for popular rights and the permanency of republican institutions." "Each department should have a will of its own." "Each should have its own independence secured beyond the power of being taken away by either or both of the others. But at the same time the relations of each to the other should be so strong that there should be a mutual interest to sustain and protect each other. There should not only be constitutional means, but personal motives, to resist encroachments of one or either of the others. Thus ambition would be made to counteract ambition; the desire of power to check power, and the pressure of interest to balance an opposing interest."