Veto of the Civil Rights Bill

Johnson, Andrew

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The following is the message of President Johnson vetoing the Civil Rights bill:

To the Senate of the United States:

I regret that the bill which has passed both Houses of Congress, entitled "An Act to protect all persons in the United States in their civil rights, and furnish the means of their vindication," contains provisions which I cannot approve, consistently with my sense of duty to the whole people, and my obligations to the Constitution of the United States, I am, therefore, constrained to return it to the Senate (the House in which it originated) with my objections to its becoming a law.

By the first section of the bill, all persons born in the United States, and not subject to any foreign power, excluding Indians not taxed, are declared to be citizens of the United States. This provision comprehends the Chinese of the Pacific States, Indians subject to taxation, the people called Gipsies, as well as the entire race designated as blacks, people of color, negroes, mulattoes, and persons of African blood. Every individual of these races, born in the United States, is by the bill made a citizen of the United States. It does not purport to declare or confer any other right of citizenship than Federal citizenship; it does not propose to give these classes or persons any status as citizens of States, except that which may result from their status as citizens of the United States. The power to confer the right of State citizenship is just as exclusively with the several States, as the power to confer the right of Federal citizenship is with Congress. The right of Federal citizenship, thus to be conferred in the several excepted ratios before mentioned, is now for the first time, proposed to be given by law. If, as is claimed by many, all persons who are native born, already are, by virtue of the Constitution, citizens of the United States, the passage of the pending bill cannot be necessary to make them such. If, on the other hand, such persons are not citizens, as may be assumed from the proposed legislation to make them such, the grave question presents itself whether, where eleven of the thirty-six States are unrepresented in Congress at the time, is it sound policy to make our entire colored population, and all other excepted classes citizens of the United States. Four millions of them have just emerged from slavery into freedom. Can it be reasonably supposed that they possess the requisite qualifications to entitle them to all the privileges and immunities of citizenship of the United States? Have the people of the several States expressed such a conviction? It may also be asked whether it is necessary that they should be declared citizens in order that they may be secured in the enjoyment of the civil rights proposed to be conferred by the bill? Those rights are by Federal as well as by State laws, secured to all domiciled aliens and foreigners, even before the completion of the process of naturalization; and it may safely be assumed that the same enactments are sufficient to give like protection and benefits to those for whom this bill provides special legislation. Besides, the policy of the Government, from its origin to the present time, seems to have been that persons who are strangers to and unfamiliar with our institutions and our laws, should pass through a certain probation, at the end of which, before attaining the coveted prize, they must give evidence of their fitness to receive and to exercise the rights of citizens as contemplated by the Constitution of the United States. The bill, in effect proposes a discrimination against large numbers of intelligent, worthy and patriotic foreigners and in favor of the negro, to whom, after long years of bondage, the avenues of freedom and intelligence have just now been suddenly opened. He must of necessity, from his previous unfortunate condition of servitude, be less informed as to the nature and character of our institutions than he who, coming from abroad, has to some extent, at least, familiarized himself with the principles of a Government to which he voluntarily entrusts life, liberty, and the pursuit of happiness. Yet it is now proposed by a single legislative enactment, to confer the rights of citizens upon all persons of African descent, born within the extended limits of the United States, while persons of foreign birth, who make our land their home, must undergo a probation of five years, and can only then become citizens upon proof that they are of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. The first section of the bill also contains an enumeration of the rights to be enjoyed by those classes so made citizens in every State and Territory in the United States. These rights are, to make and enforce contracts, to sue, be parties and give evidence, to inherit, purchase, lease, sell, hold and convey real and personal property, and to have full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by white citizens. So, too, they are made subject to the same punishments, pains and penalties, common with white citizens, and to none others. Thus, a perfect equality of the white and colored races is attempted to be fixed by Federal law in every State of the Union, over the vast field of State jurisdiction covered by these enumerated rights. In no one of them can any State exercise any power of discrimination between different races. In the exercise of State policy over matters exclusively affecting the people of each State, it has frequently been thought expedient to discriminate between the two races. By the statutes of some of the States North, as well as South, it is enacted, for instance, that no white person shall intermarry with a negro or mulatto. Chancellor Kent says, speaking of the blacks that marriage, between them and the whites are forbidden in some of the States where Slavery does not exist, and they are prohibited in all the slaveholding States by law; and, when not absolutely contrary to law, they are revolting, and regarded as an offence against public decorum. I do not say that this bill repeals State laws, on the subject of marriage between the two races, for as the whites are forbidden to intermarry with the black, the black can only make such contracts as the whites themselves are allowed to make, and therefore cannot, under this bill, enter into the marriage contract with the whites. I take this discrimination, however, as an instance of the State policy as to discrimination, and to inquire whether, if Congress can abrogate all State laws of discrimination between the two races, in the matter of real estate, of suits, and of contracts generally, Congress may not also repeal the State laws as to the contract of marriage between the races? Hitherto, every subject embraced in the enumeration of rights contained in the bill has been considered as exclusively belonging to the States; they all relate to the internal policy and economy of the respective States. They are matters which, in each State, concerns the domestic condition of its people, varying in each according to its own peculiar circumstances and the safety and well-being of its own citizens. I do not mean to say that upon all these subjects there are not Federal restraints, as, for instance, in the State power of legislation over contracts, there is a Federal limitation that no State shall pass a law impairing the obligations of contracts; and, as to crimes, that no State shall pass an *ex-post-facto* law; and, as to money, that no State shall make anything but gold and silver a legal-tender. But where can we find a Federal prohibition against the power of any State to discriminate, as do most of them, between aliens and citizens, between artificial persons called corporations and naturalized persons in the right to hold real estate? If it be granted that Congress can repeal all State laws discriminating between whites and blacks, in the subjects covered by this bill, why, it may be asked, may not Congress repeal, in the same way, all State laws discriminating between the two races on the subject of suffrage and office? If Congress can declare by law who shall hold lands, who shall testify, who shall have capacity to make a contract in a State, then Congress can also by law declare who, without regard to race or color, shall have the right to act as a juror or as a judge, to hold any office and finally to vote, in every State and Territory of the United States. As respects the Territories, they come within the power of Congress, for as to them the law-making power is the Federal power; but as to the States no similar provision exists, vesting in Congress the power to make rules and regulations for them.

The object of the second section of the bill is to afford discriminating protection to colored persons in the full enjoyment of all the rights secured to them by the preceding section. It declares that "any person who, under color of any law, statute, ordinance, regulation or custom, shall subject or cause to be subjected any inhabitant of any State or Territory to the deprivation of any right secured or protected by this act, or to different punishment, pains or penalties on account of such persons having at any time been held in a condition of slavery or involuntary servitude, except as a punishment of crime, whereof the party shall have been duly convicted, or by reason of his color or race, than is prescribed for the punishment of white persons, shall be deemed guilty of misdemeanor, and on conviction, shall be punished by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or both, in the discretion of the court." This section seems to be designed to apply to some existing or future law of a State or Territory, which may conflict with the provisions of the bill now under consideration. It provides for counteracting such forbidden legislation, by imposing fine and imprisonment upon the legislators who may pass such conflicting laws, or upon the officers or agents who shall put or attempt to put them into execution. It means an official offense, not a common crime, committed against law upon the person or property of the black race. Such an act may deprive the black man of his property, but not of his right to hold property. It means a deprivation of the right itself, either by the State Judiciary or the State Legislature. It is, therefore assumed that, under the section, members of a State Legislature, who should vote for laws conflicting with the provisions of the bill, that Judges of the State courts who should render judgments in antagonism with its terms, and that marshals and sheriffs who should as ministerial officers execute processes sanctioned by State laws and issued by State Judges in execution of their judgments, could be brought before other tribunals and there subjected to fine and imprisonment, for the performance of the duties which such State laws might impose. The legislation thus proposed invades the judicial power of the State. It says to every State Court or judge: if you decide that this act is unconstitutional; if you refuse under the prohibition of a state law, to allow a negro to testify; if you hold that over such a subject matter the said law is paramount, and under color of a State law refuse the exercise of the right to the negro; your error of judgment, however conscientious, shall subject you to fine and imprisonment. I do not even pretend that the conflicting legislation which the bill seems to contemplate is so likely to occur, as to render it necessary at the time to adopt a measure of such doubtful constitutionality. In the next place, this provision of the bill seems to be unnecessary, as adequate judicial remedies could be adopted to secure the desired end without invading the immunities of legislators, always important to be reserved in the interest of public liberty, notwithstanding the independence of the judiciary; always important to be reserved in the interest of public liberty, notwithstanding the independence of the judiciary: always essential to the preservation of individual rights, and without impairing the efficiency of ministerial officers, always necessary for the maintenance of public peace and order. The remedy proposed by this section seems to be in this respect not only anomalous but unconstitutional, for the Constitution guarantees nothing with certainty if it does not ensure to the several States the right of making index ruling law in regard to all matters arising within their jurisdiction, subject only to the restriction, in cases of conflict with the Constitution, and constitutional laws of the United States—the latter to be held as the supreme law of the land.

The third section gives the District Courts of the United States exclusive cognizance of all crimes, and offenses committed against the provisions of this act, and concurrent jurisdiction with the Circuit Courts of the United States, of all civil and criminal cases, affecting persons who are denied, or cannot enforce in the courts, or judicial tribunals of the State or locality where they may be, any of the rights secured to them by the first section. The construction which I have given to the second section is strengthened by this third section, for it makes clear what kind of denial, or deprivation of rights secured by the first section, was in contemplation. It is a denial or deprivation of such rights in the courts or judicial tribunals of the State. It stands, therefore, clear of doubt that the offense and the penalties provided in the second section are intended for the State Judge, who in the clear exercise of his functions as a judge, not acting ministerially but judicially, shall decide contrary to this Federal law. In other words, when a State Judge, acting upon a question involving a conflict between a State law and Federal law, and bound, according to his own judgment and responsibility to give an impartial decision between the two, comes to the conclusion that the State law is valid and the Federal law is invalid, he must not follow the dictates of his own judgment, at the peril of fine and imprisonment. The Legislative department of the Government of the United States thus takes from the Judicial department of the States the sacred and exclusive duty of judicial decision, and converts the State Judge into a mere ministerial officer, bound to decide according to the will of Congress. It is clear that in States which deny to persons, whose rights are secured by the first section of the bill, any one of those rights, all criminal and civil cases affecting them will, by the provisions of the third section, come under the exclusive cognizance of the Federal tribunals. It follows that if any State, which denies to a colored person any one of all these rights, that person should commit a crime against the laws of a State—murder, arson, rape or any other crime—all protection and punishment, through the courts of the State, are taken away, and he can only be tried and punished in the Federal Courts. How is the criminal to be tried, if the offense is provided for and punished by Federal law? That law, and not the State law, is to govern. It was only when the offense does not happen to be within the province of Federal law that the Federal courts are to try and punish him under any other law. Then resort is to be had to the common law, as modified and changed by State legislation, so far as the same is not inconsistent with the Constitution and laws of the United States. So that over this vast domain of criminal jurisprudence, provided by each State for the protection of its citizens, and for the punishment of all persons who violated its criminal laws, wherever it can be made to apply, displaces State law. The question here naturally arises, from what source Congress derives the power to transfer to Federal tribunals certain classes of cases embraced in the section. The Constitution expressly declares that the judicial power of the United States "shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting embassadors or other public ministers and consuls; to all cases of admirality and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State, claiming land under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects." Here the judicial power of the United States is expressly set forth and defined; and the act of September 24, 1789, establishing the judicial courts of the United States in conferring upon the Federal Courts jurisdiction over cases originating in State tribunals, is careful to confine them to the classes enumerated in the above recited clause of the Constitution. This section of the bill undoubtedly comprehends cases and authorizes the exercise of powers that are not, by the Constitution, within the jurisdiction of the Courts of the United States. To transfer them to these courts would be an exercise of authority well calculated to excite distrust and alarm on the part of all the States, for the bill applies alike to all of them, as well to those that have not been engaged in rebellion. It may be assumed that this authority is incident to the power granted to Congress by the Constitution as recently amended to enforce by appropriate legislation the article declaring that neither Slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. It cannot, however, be justly claimed that, with a view to the enforcement of this article of the Constitution, there is at present any necessity for the exercise of all the powers which this bill confers. Slavery has been abolished, and at present nowhere exists within the jurisdiction of the United States. Nor has there been, nor is it likely there will be any attempts to revive it by the people of the State. If, however, any such attempt shall be made, it will then become the duty of the General Government to exercise any and all incidental powers necessary and proper to maintain inviolate this great law of freedom. The fourth section of the bill provides that officers and agents of the Freedmen's Bureau shall be empowered to make arrests, and also that other officers may be specially commissioned for that purpose by the President of the United States. It also authorizes Circuit Courts of the United States and the Superior Courts of the Territories to appoint, without limitation, Commissioners, who are to be charged with the performance of equal judicial duties. The fifth section empowers the Commissioners so to be selected by the Court, to appoint, in writing, one or more suitable persons from time to time, to execute warrants and other processes desirable by the bill. These numerous official agents are made to constitute a sort of police in addition to the military, and are authorized to summon a *posse comitatus*, and even to call to their aid such portion of the land and naval forces of the United States, or of the militia "as may be necessary to the performance of the duty with which they are charged." This extraordinary power is to be conferred upon agents irresponsible to the Government, and to the people, to whose number the discretion of the Commissioners is the only limit, and in whose hands such authority might be made a terrible engine of wrong, oppression and fraud. The general statutes regulating the land and naval forces of the United States, the militia, and the execution of the laws are believed to be adequate for any emergency which can occur in time of peace. If it should prove otherwise, Congress can at any time amend those laws in such manner as, while subserving the public welfare, not to jeopard the rights, interests and liberties of the people.

The seventh section provides that a fee of $10 shall be paid to each Commissioner in every case brought before him, and a fee of five dollars to his deputy or deputies for each person he or they may arrest and take before any such Commissioner, with such other fees as may be deemed reasonable by such Commissioner in general for performing such other duties as may be required in the premises. All these fees are to be paid out of the treasury of the United States whether there is a conviction or not; but in case of a conviction they are to be recoverable from the defendant. It seems to me that under the influence of such temptations, bad men might convert any law, however beneficent, into an instrument of prosecution and fraud. By the 8th section of the bill, the United States Courts, which sit only in one place for white citizens, must migrate with the Marshal and District Attorney, and necessarily with the Clerk (although he is not mentioned), to any part of the district, upon the order of the President, and there hold a court for the purpose of the more speedy arrest and trial of persons charged with a violation of this act; and there the judge and officers of the court must remain, upon the order of the President, for the time therein designated.

The 9th section authorizes the President, or such persons as he may empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia, as shall be necessary to prevent the violation and enforce the due execution of this act. This language seems to imply a permanent military force that is to be always at hand, and whose only business is to be the enforcement of this measure over the vast region where it is intended to operate.

I do not propose to consider the policy of this bill. To me the details of the bill are fraught with evil. The white race and black race have lived together under the relation of master and slave—capital owning labor. Now that relation is changed; and as to ownership, capital and labor are divorced. They stand now, each master of itself. In this new relation, one being necessary to the other, there will be a new adjustment, which both are deeply interested in making harmonious. Each has equal power in settling the terms; and, if left to the laws that regulate capital and labor, it is confidently believed that they will satisfactorily work out the problem. Capital, it is true, has more intelligence: but labor is never so ignorant as not to understand its own interests, not to know its own value, and not to see that capital, must pay that value. This bill frustrates the adjustment. It intervenes between capital and labor, and attempts to settle questions of political economy through the agency of numerous officials, whose interest it will be to ferment discord between the two races; for as the breach widens, their employment will continue; and when it is closed, their occupation will terminate. In all our history, in all our experience as a people living under Federal and State law, no such system as that contemplated by the details of this bill has ever before been proposed or adopted. They establish for the security of the colored race safeguards which go indefinitely beyond any that the General Government has ever provided for the white race. In fact, the distinction of race and color is by the bill made to operate in favor of the colored and against the white race. They interfere with the municipal legislation of the States; with relations existing exclusively between a State and its citizens, or between inhabitants of the same State; an encroachment and assumption of power by the General Government which, if acquiesced in, must sap and destroy our federative system of limited powers, and break down the barriers which preserve the rights of the States. It is another step, or rather stride, toward centralization and the concentration of all legislative powers in the National Government. The tendency of the bill must be to resuscitate the spirit of rebellion, and to arrest the progress of those influences which are more closely drawing around the States the bonds of union and peace.

My lamented predecessor, in his proclamation of the 1st of January, 1863, ordered and declared that all persons held as slaves within certain States and parts of States therein designated, were, and thenceforward should be, free; and further, that the Executive Government of the United States, including the military and naval authorities thereof, would recognise and maintain the freedom of such persons. This guaranty has been rendered especially obligatory and sacred by the amendment of the Constitution abolishing slavery throughout the United States. I, therefore, fully recognize the obligation to protect and defend that class of our people whenever and wherever it shall become necessary, and to the full extent, compatible with the Constitution of the United States. Entertaining these sentiments, it only remains for me to say that I will cheerfully cooperate with Congress in any measure that may be necessary for the preservation of the civil rights of the freedmen, as well as those of all other classes of persons throughout the United States, by judicial process under equal and impartial laws, or conformable with the provisions of the Federal Constitution.

I now return the bill to the Senate, and regret that in considering the bills and joint resolutions, 42 in number, which have been thus far submitted for my approval, I am compelled to withold my assent from a second measure that has received the sanction of both Houses of Congress. ANDREW JOHNSON,

WASHINGTON, D. C., March 27, 1866.