THE CIVIL RIGHTS BILL.

WE publish in our correspondence columns a communication from E. H. Fairchild, president of Berea College, entitled "Civil Rights," to which we call the attention of our readers. The object of the article is to advocate the passage of the Civil Rights Bill now pending before Congress, either in the form adopted by the Senate last winter or in the modified form proposed by the Judiciary Committee of the House of Representatives.

The great difficulty with President Fairchild's argument consists in the fact that it mistakes the contents of the Civil Rights Bill in both of its forms. Having made a series of suppositions which represent the *state* authorities as violating one or more of the prohibitions of the recent amendments to the Federal Constitution, he proceeds to say: "All that we maintain Congress should do on these questions and all that the Civil Rights Bill undertakes to do is to prevent unequal legislation and unequal execution of laws on account of race or color." He says again: "I can conceive of no way to defeat the operation of such laws except by the infliction of penalties upon those who maliciously enact or execute them. This is what the Civil Rights Bill proposes to do." There can be no doubt that state laws violative of the prohibitions imposed by the recent amendments furnish the occasion for the exercise of the enforcing power vested in Congress. In all such cases Congress may provide for rendering these laws inoperative by bringing into action the judicial power of United States courts, or it may make the execution of such laws a penal offense, or it may adopt both methods. Either method lies within the limits of "appropriate legislation," because it lies within the scope of the prohibitions themselves.

It so happens, however, that the Civil Rights Bill—resting upon the Fourteenth Amendment, if upon anything in the Constitution—either aims its penalty at *private*

individuals who do not represent the authority of the state or enforce its laws, or assumes a jurisdiction in respect to state action which the amendment does not confer. Under the latter category it attempts to regulate the management of "common schools and public institutions of learning or benevolence, supported in whole or in part by general taxation." Now, in respect to these schools and institutions as the creatures of state law and regulated thereby, we deny that the Fourteenth Amendment vests in Congress any power of control over them. We are utterly opposed to any discrimination on account of race or color in the administration of such institutions and just as much opposed to any interference with the administration by Congress. They do not come within the purview of the amendment at all. The Supreme Court of Ohio and also that of Indiana have decided that, so far as the Fourteenth Amendment is concerned, the states may adopt the system of mixed schools, educating both races in the same, or that of separate schools, just as they may educate the sexes either separately or together. We regard these decisions as correct; and, hence, so much of the Civil Rights Bill as relates to common schools has, in our judgment, no warrant in the Constitution. The same is true in respect to "public institutions of learning or benevolence." These are matters for every state to regulate in its own way, and with them Congress has nothing to do.

So also in respect to the question of jurors in state courts we equally hold that this is a subject to be regulated exclusively by state law. A juror is a public officer, as much so as a sheriff or a judge; and no man has a natural right to the office, any more than to that of sheriff or judge. It is for the state to decide who shall perform the jury duty in its own courts and how they shall be appointed. It may admit or exclude females, as it may demand a property qualification, or confine the duty to either of the two races, or extend it to both. The question is not what it is expedient and right for a state to do; but whether Congress has any right to regulate its discretion in respect to the matter of race or color, any more than in respect to sex or any other circumstance. We should just as soon think of regulating the organization of state legislatures by the authority of Congress as regulating the organization of state juries by this authority. It is well to remember that the Fourteenth Amendment says nothing about race or color, any more than it does about sex. The question of race or color appears only in the Fifteenth Amendment, and there it refers only to the right of voting.

Turning to the other category—namely, that of *private* individuals—we find in the Civil Rights Bill a municipal code aiming its penalty at hotel-keepers, the proprietors of public conveyances on land and water, the owners or lessees and managers of theaters, and the managers of other places of amusement, as circuses, shows, operas, etc. This branch of the bill is a municipal code to be enacted by Congress, and to operate upon *individuals* who in their action neither make nor enforce state laws. We pronounce it grossly unconstitutional. In the cases of the United States *vs.* Souders, 2 Abb. U. S. R. 456, and of The People *vs.* Brady, 40 Cal. 198, it was decided that "the Fourteenth Amendment is addressed alone to the *states* in their corporate capacity, that its prohibitory clauses execute themselves by nullifying adverse state legislation, and that *Congress obtained no power under it to pass laws operating affirmatively upon individuals.*" Here are two decisions declaring that the very thing which the Civil Rights Bill proposes to do Congress, under the Constitution as it is, has no right to do. Nothing can be clearer than that the Fourteenth Amendment addresses itself to the *states*, acting through their legislative, judicial, or executive departments, and not to *individuals*, whether they be hotel-keepers or the managers of theaters; and, hence, it confers no authority upon Congress to regulate the action of the latter.

Our objection to the Civil Rights Bill, in a word, is that its contents do not lie within the jurisdiction of Congress. The Fourteenth Amendment constitutes its only possible basis, and this happens to be no basis at all. Make a case that comes within the scope of the amendment, and then we shall strenuously insist that Congress shall apply thereto its enforcing power. We believe in confining the legislation of Congress within the limits of its own powers. Unless this rule be observed there is no use in having a Constitution.