The Right of Suffrage and Representation in Mississippi.

SPEECH

OF

HON. ANDREW F. FOX,
OF MISSISSIPPI,
IN THE HOUSE OF REPRESENTATIVES,
Thursday, April 24, 1862.

The House being in Committee of the Whole on the state of the Union, and having under consideration the bill (H. R. 1585) making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1862—

Mr. FOX said:

Mr. CHAIRMAN: I want to avail myself of the time accorded me to discuss the question of suffrage and the right of Congressional representation in the State of Mississippi. Mr. Chairman, this discussion is not of my seeking, and I regret for some reasons that it has been precipitated in this House, but there is on this question so much of ignorance, so much of prejudice, and, I am sorry to say, in some quarters so much of bitterness, that I hope a calm and dispassionate consideration of the question may contribute somewhat to a better understanding of the situation in Mississippi.

Mr. Chairman, let me say at the outset that the Mississippi constitution is the product of great lawyers and of a wise, sincere Christian statesmanship, and that, as a Mississippian, I am not here to apologize for it. I am not here to appeal to the generosity of this Congress. I am here to say that if the status quo to-day in Mississippi is right, if it is constitutional, if it is just, if it contributes to the promotion of the civilization of our people, then it ought to have the approbation and not the condemnation of all good citizens. If that constitution has incurred in any way the displeasure of the petty, two-by-four, politicians, it ought to have the support of every patriotic citizen in this country who wants to promote a Christian civilization.

Mr. Chairman, as I have said, we do not ask you to be generous; we only ask you to be just, and if, in order to protect our civilization, in order to secure the rule of virtue, of intelligence, we have justly incurred the penalty of the reduction of our representation in Congress, then we will take our medicine rather than surrender our civilization.

I contend, Mr. Chairman, that there is no feature of the suffrage provision of the constitution of Mississippi that denies to any citizen the right to vote or abridges that right, within the meaning of the fourteenth amendment, in such a way as to incur the penalty of a reduction of our representation in Congress, which is based upon the entire population of the States, without regard to illiteracy, pauperism, nationality, or citizenship.
In order that we may fully understand this question and determine whether or not Mississippi has denied the right to vote to any of its citizens so as to incur the penalty of a reduction of representation, it is proper to determine in the first place who has the right to vote in Mississippi or in any other State.

Whence does the right to vote arise? What is the right to vote which you can not deny to a citizen without incurring this penalty? There are two opinions about the right of suffrage, Mr. Chairman. One is the opinion expressed by the politician, and the other is the opinion maintained by the courts of the country and the great lawyers of the country. The last State platform of the Republican party in the State of Ohio declares that "the right of franchise is vouchsafed to every American citizen under the Federal Constitution." Mr. Chairman, if that is true, then there is not a State in this Union that is entitled to the representation in Congress that it now has.

In this country every woman is a citizen of the United States; every child born of American citizens is a citizen of the United States. There was a time when some lawyers had the same opinion which the gentleman who drew this platform entertained with respect to woman suffrage. They believed that the right to vote was an attribute of citizenship and was guaranteed to every citizen of the United States by the Federal Constitution. Believing this they began a proceeding in the courts of the State of Kentucky on behalf of Mrs. Virginia Minor to establish the right to vote. In that proceeding they made the same contention that was declared by the Republican party in the State of Ohio. They contended that because Mrs. Minor was an American citizen, and because the right of suffrage was an attribute of citizenship and guaranteed to every citizen by the Federal Constitution, therefore she had the right to vote.

That case went to the Supreme Court of the United States, and the opinion of that court is to be found in 21 Wallace, page 163. After an exhaustive review of the whole question the court concluded their opinion by saying that the Constitution of the United States does not confer the right of suffrage upon anyone. So that then the principle was forever established that the right to vote was not a right of citizenship; that no one in these United States—no citizen—receives his right to vote, if he has it, from the Constitution of the United States.

There is no word written in the statutes or in the organic law of these United States that confers the right to vote upon anybody. In the case of the United States against Reese, reported in 103 U. S., page 614, the defendants were indicted for refusing to receive and count the vote of a negro on the theory that as the fourteenth amendment made citizens of negroes, therefore it conferred upon that race the right to vote.

The Supreme Court of the United States in that case said:

Before the adoption of the fifteenth amendment it was as much within the power of the State to exclude citizens of the United States from voting on account of race as it was on account of age, property, or education; that the fifteenth amendment does not confer the right of suffrage upon anyone, but simply prevents discrimination on account of race, color, or previous condition of servitude.

It further declared that if citizens of one race having certain qualifications are permitted to vote, then those of another having the same qualifications must also be permitted to vote. That is the only right conferred by the fifteenth amendment. It is the
right not to be discriminated against on account of race, color, or previous condition.

Mr. Chairman, I call the attention of the House and the country to the statement of the court in this case, which clearly holds that it is at any time now within the power of any State to exclude citizens of the United States from voting on account of age, property, or education. There is nothing now in the organic law, or in any law, that prevents wholesale disfranchisement by any State of its citizens who do not possess the requisite educational qualification or such property qualification as the makers of the law may think they should have. It is now perfectly competent for a legislature to prescribe property and educational qualifications for the voters of the State, unless its own constitution prohibits it; and it is perfectly competent for a State to exclude from the right of voting any number of its citizens, provided that it is not done on account of race, color, or previous condition of servitude.

I say there is no reason for which a State may not disfranchise any citizen of the United States except the one reason—race, color, or previous condition of servitude. You can not disfranchise on that ground, because the fifteenth amendment to the Constitution says that you shall not discriminate in that way. But it does not say that you may not disfranchise any number of both races who belong to the same class—for instance, who are criminals, or who are paupers, or who fail to pay a capitation tax, or who do not possess the required educational qualification.

Mr. HENRY C. SMITH. Will the gentleman permit an interruption?

Mr. FOX. Certainly.

Mr. HENRY C. SMITH. Under what clause of this agricultural bill is the gentleman discussing this proposition of colored suffrage? Perhaps it is under the provision with regard to “raising cane.” [Laughter.]

Mr. FOX. We are trying to prevent you from “raising hell” among the agricultural population of Mississippi. [Laughter.] We are doing our best here to promote the industrial development of the State, to promote its moral elevation, and to promote education among its citizens.

Mr. Chairman, I had hoped to appeal to the reason and patriotism of gentlemen like my friend from Michigan. Is it possible that we are not to be heard in making a fair presentation of the legal phases of this great question without its being smeared at by gentlemen who come here as representatives of great districts of this Union and who ought to be in sympathy with us when we are trying to promote the elevation and the civilization of our people?

And it is purely the legal phase of this question that I am presenting now. I am not asking any favors from the gentleman from Michigan or from anybody else. I appeal to your sense of justice and your sense of right and your feeling of patriotism and your love of Christian civilization. And I would say another thing to the gentleman. I would commend to him the statement of the President of the United States after he had returned the other day from his little trip to Charleston—that before he went down there he was a good American citizen, but that he was a better one after having gone down there and learned something
about our people and the situation there. [Applause on the Democratic side.]

Mr. HENRY C. SMITH. Will the gentleman permit another suggestion?

Mr. FOX. Yes; if you are sincere in it.

Mr. HENRY C. SMITH. Certainly; I am always sincere, though perhaps I do not look sincere. [Laughter.]

Mr. FOX. I agree with you in the latter statement.

Mr. HENRY C. SMITH. Well, I am glad we are in harmony on that proposition. But I was going to suggest that you also include in your remarks in regard to the President the estimate that you and other gentlemen have put upon him because he had the courage to invite the whitest black man of this nation, against the protest of the blackest white men of this nation, to eat at his table.

Mr. FOX. Mr. Chairman, I do not think it is fair for the gentleman to divert me from a legal argument and try to induce me to discuss the social phases of this question. I want to say now that I have never had any quarrel with the President or with anybody else who saw proper to invite a black man to his table. Nobody ever heard me say anything about it or make any criticism of it. I say that it is a man's perfect right to fix, so far as he can, his own social status. [Applause on the Democratic side.]

It is none of my business what the gentleman from Michigan [Mr. HENRY C. SMITH] may see proper to do as to his table. He can extend the privilege of his home and he can extend the privilege of his family circle to anyone that he pleases to extend them to. If it is nothing to me; it is none of my business.

He is the best judge of that, but I have only to say this, Mr. Chairman, that, so far as the colored people in the State of Mississippi are concerned, they are not seeking social equality, and the great leader of that race, to whom the gentleman alludes, is preaching a better doctrine to his race than is the gentleman from Michigan. He is trying to teach the people of his race to have respect enough for their own race and to have respect enough for themselves to be satisfied with the association of their own race and not seek to add to their importance by endeavoring to associate with others, and that doctrine has so thoroughly impressed the minds of the race in Mississippi that they not only do not seek social equality with the whites but they have little respect for the white man who would put himself on a perfect social equality with them. [Applause on the Democratic side.]

When this question was discussed here in the House the other day I was annoyed that some of our friends on this side from the South expressed so much annoyance that the gentleman from Massachusetts [Mr. GILLETTE] would preach the doctrine of social equality between the two races, and I said that there is nothing in that that ought to annoy you or me, that every man has a right to select his associates in society so far as he can, but not to force it on us. You must allow us the same privilege you claim for yourselves. But, Mr. Chairman, I am sorry to have been diverted from a legal argument. I am here to discuss the legal phases of the question of suffrage, and what I do object to most seriously is an endeavor to force Mississippi to submit to a rule that is not equally applicable to Massachusetts and Connecticut and Vermont.

Mr. HENRY C. SMITH. In that connection, Mr. Chairman——
Mr. FOX. Now, if you are going to ask me anything about the legal phase of this question I will yield, but not otherwise.

Mr. HENRY C. SMITH. It is right along your line.

Mr. FOX. Does the gentleman want to ask me a question about the law of this case? If so, I would be glad to enlighten him.

Mr. HENRY C. SMITH. That is my idea of it. Now, there has been a resolution introduced into this Congress by myself, providing that Congress shall fix the qualification of voters who vote for electors and members of Congress, an amendment to the Constitution to that effect, and that that qualification shall be uniform throughout the States of the Union.

Mr. FOX. Very well, we will discuss that question when it comes up, but that is not the question presented now. You admit yourself——

Mr. HENRY C. SMITH. Does not that meet the proposition that you now make?

Mr. FOX. No, sir. You admit yourself the correctness of my proposition by coming here and introducing an amendment to the Constitution authorizing Congress to fix the qualification of voters, which the Constitution does not now authorize and which this Congress does not now have the power to do; so we are agreed about that. It is the thing that I am contending, Mr. Chairman, that the right of suffrage comes not from Congress, comes not from any provision of the Constitution of the United States, but at present must come from the States which alone have the right to fix the qualifications of their voters.

Mr. HENRY C. SMITH. Just another question. Are you not willing that the same qualification to vote shall exist in your State that exists in the other States of the Union?

Mr. FOX. You bet I am, and that is just exactly what we have done. We have fixed the qualifications of voters in Missis-
sippi, following the example of the State of Massachusetts, except that they are not as restricted. I would not be willing to vote for the gentleman’s bill, so far as that is concerned, if that is what he means, because I believe in the wisdom of our fathers; I believe that there was nothing wiser that characterized the work of the framers of the Constitution than to leave to the States the power to fix the qualifications of their own voters, because each State knows better the conditions within its borders and knows better what is best to promote civilization in that particular State than any other State or body does. I am not willing to have you fix the qualification of voters in Mississippi.

Mr. HENRY C. SMITH. In other words, by the wisdom of the fathers the gentleman means the wisdom of State rights.

Mr. FOX. Well, yes, if you say they were States-right men who made the Constitution. [Applause on the Democratic side.] And let me say to the gentleman that when that Constitution was framed every one of the 13 colonies except two or three already had State constitutions fixing the qualifications of their own voters, each one to suit itself, and there was no disposition upon the part of the framers of the Constitution to interfere with the status of each State.

Mr. GAINES of Tennessee. Will my friend yield for a ques-
tion on a proposition of law?

Mr. FOX. Yes.

Mr. GAINES of Tennessee. Just now you stated the proposition very clearly that the right of suffrage comes from the State.
Mr. FOX. I was proceeding with that when I was interrupted by the gentleman from Michigan.

Mr. GAINES of Tennessee. I want to state to the gentleman from Michigan that the Supreme Court of the United States decided that in a case coming from his own State of Michigan, where the question of the electors of that State was raised in the case of McPherson v. Blacker.

Mr. FOX. Now, Mr. Chairman, I have said that it was the opinion of the Republicans of Ohio—or whether so or not; it is declared in their last State platform—that the right of franchise is vouchsafed to every American citizen by the Federal Constitution. As against that the Supreme Court of the United States, in the case of The United States v. Cruikshanks (92 U. S., 542), declared that the United States have no voters of their own in the States; that the right of suffrage is not an attribute of national citizenship and that the right to vote comes from the State, but that the right of exemption from the prohibitive discrimination comes from the United States. That is the right that is protected by the fifteenth amendment.

Now, Mr. Chairman, in the Michigan case the Supreme Court asked the question that I have asked, "What is the right to vote which the fourteenth amendment to the Constitution says you can not deny to any citizen without incurring the penalty of a reduction in representation in Congress?" And they answer that question and say that "the right to vote intended to be protected by the fourteenth amendment refers to the right to vote as established by the laws and constitutions of the States."

Now, Mr. Chairman, that is the thing to fix clearly in our minds at the very threshold of this discussion. What is the right to vote, and whence does it arise? The right to vote is not a natural right, as said by Mr. Cooley and other writers on constitutional law. It is not a right of citizenship, as said by the Supreme Court of the United States, and every lawyer and every judge in the United States that has ever delivered an opinion on the question that was not a purely political opinion. It is not a natural right. We are not born with it. We do not get it by reason of our citizenship. It does not come to us by reason of any provision in the Constitution of the United States.

It does not come to us by virtue of any statute of the United States, as the gentleman from Michigan [Mr. HENRY C. SMITH] is forced to acknowledge, by introducing his resolution to amend the Constitution of the United States. It comes from the State that confers it, and from the State alone. No citizen of a State has a right to go to the legislature of the State and say, "I have a right to vote which you can not deny to me." The man who can not read has no right to say to the legislature of his State, "I have a right to vote notwithstanding my illiteracy, and you can not disfranchise me."

Mr. CALDERHEAD. Will the gentleman permit a question?

Mr. FOX. Certainly.
Mr. CALDERHEAD. Who conferred the right to vote upon
the men who made the original thirteen States?
Mr. FOX. I have answered that question; that before the
adoption of the Constitution of the United States each State had
its own constitution. If the gentleman will read the history of
the formation of the Constitution—
Mr. CALDERHEAD. I have read that.
Mr. FOX. Well, that is a complete answer.

Read what the great constitutional lawyers like Mr. Cooley and
others, who have given a lifetime to the study of all the provisions
of the Constitution of the United States, have said. They cer-
tainly knew something about it. Listen to what one of these
great constitutional lawyers says. I suppose it will be admitted
that there is no greater authority on the Constitution than Mr.
Cooley, who has written three separate works on the Constitu-
tion, and he says that—

Suffrage can not be the right of an individual, and why? For the simple
reason that it does not exist for the benefit of the individual but for the bene-
fit of the State itself. Suffrage must go to the individual, not as a right, but
as a regulation which the State establishes as a means to perpetuate its own
existence and of assuring to the people the blessings it was intended to
secure.

So, Mr. Chairman, that is the whole philosophy of the right of
suffrage.

Mr. WM. ALDEN SMITH. From what are you reading?
Mr. FOX. From Cooley. From an article in the Washington
Post, in this city. It is a paper that I prepared at the request of
the press, and was published several weeks ago in the Washington
Post. As a matter of convenience, instead of having the law books
piled up around me, I am reading from it.
Mr. WM. ALDEN SMITH. I did not recognize it as an official
document.
Mr. FOX. Well, it is official, though it may not have the blue
ribbons about it. It is all right.

Now, Mr. Chairman, it is perfectly clear that a State can deny
to any citizen the right which it alone confers. There is no doubt
about that, and the only limitation in the world on the right is
that fixed by the fifteenth amendment to the Constitution of the
United States, which says that you shall not deny the right to
vote to any man because he is white, because he is black, or be-
cause he is colored.

Mr. WM. ALDEN SMITH. In other words, if it is not planted
upon either one of these grounds, the State has the right.
Mr. FOX. I do say that. I do say, further, that if it does deny
the right to vote to any of its citizens in the sense contemplated
by the fourteenth amendment of the Constitution, and it does
abridge that right, then the citizen of the State can not complain,
but that we do incur the penalty in the reduction of our repre-
sentation. Why, there is no quarrel between us. We have got
the right in Mississippi to say who of our citizens shall vote and
who shall not vote, save only we can not say "you can not vote
because you have been a slave, or because you are black, or be-
cause you are white."

We have the right to disfranchise any number of our citizens
on any ground that the wisdom of the lawmakers think is proper
if we are willing to incur the penalty of the reduction of representation in Congress. No lawyers ought to differ about the legal question, and it is purely a legal question. There is no use for any resolutions of investigation of the conditions to ascertain what the truth is as to any particular State. It is a legal question that any lawyer can determine for himself if he is willing to do it.

Mr. SMITH of Iowa. Will the gentleman allow me to ask this question?

Mr. FOX. Yes.

Mr. SMITH of Iowa. What objection is there to a committee compiling the statutes and regulations with reference to the voters of the various States of the Union, including Massachusetts and Mississippi, and furnishing them in accessible form to this House, to the end that members of this House may pass upon the legal questions which the gentleman refers to?

Mr. FOX. I have made no objection to that.

Mr. SMITH of Iowa. But the gentleman said there was no necessity for any investigation, and the Crumpacker resolution simply provides for an investigation for the presentation of the various statutes of the States, the various laws of the States, and the various regulations of the States, with information of a like character which will enable the membership of this House to determine whether or not any State has forfeited its right to any part of its representation under the fourteenth amendment.

Mr. FOX. I am not discussing the Crumpacker resolution.

Mr. SMITH of Iowa. But I want to say, if the gentleman will permit—

Mr. FOX. I do not want the Crumpacker resolution injected into this speech, for I am making a legal argument. But if the gentleman from Iowa insists upon it, I want to say that the Crumpacker resolution does propose to investigate not only the law of the case, but the methods of the election in Mississippi.

Mr. SMITH of Iowa. The legal methods?

Mr. FOX. No, not the legal methods alone, but all the methods. I want to say—

Mr. WILLIAMS of Mississippi. If it was to investigate only the law, we could investigate that right here, because we have the law books here.

Mr. FOX. I want to say to my friend from Iowa—and he is my friend—that the reason we object to the investigation of the methods—the reason we do not assent to that—is that it is an imputation on our State as to our methods of conducting the elections in Mississippi, an imputation that it is not honest, and the Crumpacker resolution was gotten up purely and solely for political purposes, and the gentleman knows it.

Mr. SMITH of Iowa. I do not know that.

Mr. FOX. It has been charged in the press, in a great paper in Philadelphia, conducted by a gentleman who has been a member of the Cabinet under this and a former Administration, that there have been tens of thousands of fraudulent votes cast in the city of Philadelphia, and there has been no movement on the part of this House to investigate that.

Mr. SMITH of Iowa. Does not the Crumpacker resolution provide for investigating Pennsylvania and Massachusetts as much as any other State?

Mr. RICHARDSON of Alabama. But the gentleman must
admit that the purpose, spirit, and intention of the resolution is to look into three or four of the Southern States.

Mr. SMITH of Iowa. I do not think that is true. It is to investigate these other States as much as it is to investigate Mississippi.

Mr. FOX. Now, Mr. Chairman, I want to say that the constitution of Mississippi was framed by great lawyers and by wise and patriotic statesmen, who were anxious to relieve the State of the horrible state of affairs existing during the period of reconstruction, and which it is not necessary for me here to recite. They are matters of history. The gentleman knows that, and it became necessary in order to save her civilization to disfranchise ignorance and crime and vice, and to secure the rule of virtue and intelligence. In undertaking to do that we looked to a part of the country that I am willing to say here has, perhaps in many respects the highest and best, civilization of any section in the United States; we went to New England, which is older in its history and has had the benefit of more experience than other sections of the country.

In Massachusetts they were confronted with the same condition of things when they framed their constitution. They were flooded with a great influx of ignorant foreigners, and they knew that they could not turn over the government to them, and so they disfranchised all illiterate voters. They have a grandfather clause in their constitution, as you will see, if you gentlemen will read it. They excepted from that provision everybody 60 years of age, and if a man is 60 years of age and isn't a grandfather, he ought to be. [Laughter.]

Mr. SMITH of Iowa. We all agree to that.

Mr. FOX. They went further than we did. They disfranchised all paupers, and we have no pauper qualification. We followed the illustrious example of Massachusetts, and the politicians in Congress have never complained of the State of Massachusetts, or of Connecticut, or of Vermont, in which State I had the delightful pleasure of spending three months last summer, and I want to say here that the wisdom of the constitution of that State is illustrated by the high character and reverence for law and order that exists among the people of Vermont. They provided in their constitution that a man must be of good behavior and of good moral character.

I insert here the franchise clauses of the constitutions of several States, including those of Mississippi:

MISSISSIPPI.

Sec. 240. All elections by the people shall be by ballot.

Sec. 241. Every male inhabitant of this State, except idiots, insane persons, and Indians not taxed, who is a citizen of the United States, 21 years old and upward, who has resided in this State two years and one year in the election district, or in the incorporated city or town in which he offers to vote, and who is duly registered as provided in this article, and who has never been convicted of bribery, burglary, theft, arson, obtaining money or goods under false pretenses, perjury, forgery, embezzlement, or bigamy, and who has paid, on or before the 1st of February of the year in which he shall offer to vote, all taxes which may have been legally required of him, and which he has had an opportunity of paying according to law, for the two preceding years, and who shall produce to the officers holding the election satisfactory evidence that he has paid said taxes, is declared to be a qualified elector; but any minister of the gospel in charge of an organized church shall be entitled to vote after six months' residence in the election district, if otherwise qualified.

Sec. 244. On and after the 1st day of January, A. D. 1862, every elector
shall, in addition to the foregoing qualifications, be able to read any section of the constitution of this State; or he shall be able to understand the same when read to him, or give a reasonable interpretation thereof. A new registration shall be made before the next ensuing election after January the 1st, A. D. 1829.

MASSACHUSETTS.

Art. III. Every male citizen of 21 years of age and upwards (except paupers and persons under guardianship), who shall have resided within the Commonwealth one year, and within the town or district in which he may claim a right to vote, six calendar months next preceding such election, have been assessed upon him in any town or district of this Commonwealth, and also every citizen who shall be by law exempted from taxation, and who shall be of the years of age required to qualify as above mentioned, shall have the right to vote in such election of governor, lieutenant-governor, Senators, and Representatives, and no other person shall be entitled to vote in such elections. Ratified by the people April 9, 1829, and still in force.

In 1857 the following amendment was added to the above provision of the constitution of Massachusetts:

"Art. XX. No person shall have the right to vote, or be eligible to office under the constitution of this Commonwealth, who shall not be able to read the constitution in the English language, and write his name: Provided, however, That the provisions of this amendment shall not apply to any person prevented by a physical disability from complying with its requisitions, nor to any person who now has the right to vote, nor to any person who shall be 60 years of age or upward at the time this amendment shall take effect."

In 1861 another amendment was added:

"Art. XXVIII. No person having served in the Army or Navy of the United States in time of war, and having been honorably discharged from such service, if otherwise qualified to vote, shall be disqualified therefor on account of being a pauper, or if a pauper, because of the nonpayment of a poll tax."

VERMONT.

"Art. 8. That all elections ought to be free and without corruption, and that all freemen having a sufficient, evident, common interest with and attachment to the community have a right to elect officers and to be elected into office, agreeably to the regulations made in this constitution."

By the plan or frame of government contained in the second chapter it is ordained that:

"Sec. 21. Every man of the full age of 21 years, having resided in this State for the space of one whole year next before the election of Representatives, and is of a quiet and peaceable behavior, and will take the following oath or affirmation, shall be entitled to all the privileges of a Freeman of this State."

CONNECTICUT.

In Connecticut the constitution of 1818, as amended in 1845 and 1858, fixed the qualifications of electors thus:

"Sec. 2. Every (white) male citizen of the United States who shall have attained the age of 21 years, who shall have resided in this State for a term of one year next preceding and in the town in which he may offer himself to be admitted to the privileges of an elector at least six months next preceding the time he may so offer himself, and shall sustain a good moral character, shall, on his taking such oath as may be prescribed by law, be an elector."

By the eleventh amendment, adopted in October, 1855:

"Every person shall be able to read any article of the constitution or any section of the statutes of this State before being admitted an elector."

Now, such has been the organic law of these other States for years and years. You never heard any complaint made here in Congress about their action. But as soon as Mississippi sees proper to follow the example of those States in order to protect her civilization you come in here and because it is imagined that the persons disfranchised will vote the Republican ticket you undertake to raise a howl about it. [Applause.]

Mr. SMITH of Iowa. I would not support any measure with reference to Mississippi which I would not support with reference to Massachusetts. I want that distinctly understood.

Mr. FOX. I know you would not. When I said "you," I did
not mean it personally. If the gentleman thinks I did, I take it back.

Mr. BREAIZER. I would like to ask the gentleman this question, whether one of the chief objections to the Crumpacker resolution is not predicated upon the fact that the investigation proposed and the testimony to be adduced must necessarily be ex parte and partisan, and therefore unsafe as the basis of any conclusion? Is not that one of the chief objections?

Mr. FOX. Certainly; that is what I have stated. The investigation is for partisan purposes.

I do not wish to discuss that resolution in itself especially, but it will be remembered that when it was introduced here during the last Congress in the form of a bill by the gentleman from Indiana, it was made applicable to only four States which the gentleman named. And everybody knows that the pending resolution was intended to apply to a few Southern States. In fact, a distinguished lawyer in that caucus in which the Crumpacker resolution was considered urged that this is not an indestructible Union of indestructible States, but that Mississippi having gone out of the Union and having been readmitted by an act of Congress stipulating that the right of suffrage should not be restricted in that State, therefore Mississippi does not have the same rights that Massachusetts has to fix the qualifications of its own voters.

Mr. WM. ALDEN SMITH. Well, we are not bound by that.

Mr. FOX. I am discussing now the general sentiment about this matter. The unfortunate condition of things is that he is not bound by your proposition either. I wish he were.

In reference to this, Mr. Cooley says:

When a State comes into the Union it is received on an equal footing with the original States and with all their rights and privileges. It must, therefore, have the same power to amend its constitution which is possessed by the other States, and a condition which should undertake to limit its power in this regard must, in a legal sense, be wholly impotent.

Mr. Cooley cites In support of his position 3 Howard, 212; 10 Howard, 82; 18 Wall., 57; 125 United States, 1. This writer also cites the case of Williams v. Mississippi (170 United States, 213), in which the court, ignoring the act of Congress above referred to, holds that there is no provision in the present constitution of Mississippi which is in violation of any Federal law.

We may add that in the case of Texas v. White, the United States Supreme Court held that Mississippi and the other reconstructed States were never out of the Union, but that this was an indestructible Union of indestructible States.

Mr. WM. ALDEN SMITH. Any man who would undertake to say that Mississippi is not loyal to the Union would be written down as a jackass, full fledged. [Applause.]

Mr. FOX. I thank the gentleman for that statement. I gladly yield for the applause. [Renewed applause.]

I will say sincerely that my heart goes out to the gentleman for that statement; and I am glad that the time has come when a citizen of the South or a member representing a Southern Congressional district does not have to get up on this floor and assert the loyalty of his people and undertake to prove it.

I have always had too much respect for my people, in view of the proof they have given of their loyalty to the Union, to get up here and assert that they are loyal, and that the war is over. You have never heard me do it. And for that very reason I say that
the time has come when a Southern representative in Congress ought to be able to get up here and state his honest views on a question of governmental policy without looking around the corner and without apologizing.

This is purely a legal question that presents itself to us as lawyers; and in addition to that, it is a question that presents itself to us as Christians, if not as statesmen—as citizens anxious to promote the welfare and peace, the law and order, and the increased prosperity of every section of the Union, whether Democratic or Republican in political sentiment. And if, as I assert, there is no race question in Mississippi; if this constitution of Mississippi which we now have is satisfactory to both races; if it has had a tendency to elevate both; if it has had a tendency to promote law and order in the State and to promote harmony between the two races; to promote, I will say, the mutual love of both races as it exists there now, then nobody except a petty politician who cares nothing for the welfare of this country will seek to destroy the fabric which we have built up.

But I was proceeding to say that there is nothing in the constitution of Mississippi that denies the right to vote to anybody except for crime. Do you say that we have an educational qualification, and this denies the right to vote to anybody? It does not; it can not. Education is a qualification that any man can attain. It is not impossible; it is easy of attainment; and it is for the good of the citizen that he be required to attain it.

It takes no longer for a man to learn to read and write than the term of residence required by the constitution of every State in the Union to make a man a citizen. For instance, the State of Mississippi requires one year's residence before a man can vote. Every State of the Union prescribes some term of residence as a prerequisite for citizenship; and it is no greater hardship to require a man to learn to read before he can be allowed to vote than it is to require him to reside within the State for a certain length of time.

The CHAIRMAN. The time of the gentleman has expired.

Mr. HENRY C. SMITH. Mr. Chairman, I ask unanimous consent that the time of the gentleman may be extended twelve minutes.

Mr. WILLIAMS of Mississippi. One moment. Mr. Chairman, I yield twelve minutes more to the gentleman from Mississippi.

Mr. FOX. That is the view that Mr. Cooley takes of this question. Let me read:

To require the payment of a capitation tax is no denial of suffrage; it is demanding only a performance of a public duty. Nor can it be said that ability to read is any denial of suffrage. To refuse to receive one's vote because of his color or because of natural equality or peculiarities, which it would be impossible for him to overcome, is plainly a denial of suffrage, but ability to read is something within the power of any man. It is not difficult to obtain it, and it is no hardship to require it. On the contrary, the requirement by indirection compels one to appropriate a personal benefit that he might otherwise neglect. It denies to no man the suffrage but the privileges tendered to all, subjected only to a condition that is beneficial in its performance, light in its burdens.

An educational qualification is not a denial, but only a regulation, of the right of suffrage, just as a law prohibiting the carrying of concealed weapons is not a denial of the constitutional
right to bear arms, but only a regulation restricting that right
to those who carry them unconcealed.

Now, I want to call the attention of the House to another pro-
vision in the franchise clause of our constitution, which requires
the payment of a capitation tax. The payment of that tax is
voluntary in Mississippi, but the payment of the tax for two years
preceding the election is a requisite qualification of all voters.

Mr. WILLIAMS of Mississippi. I would suggest to the gent-
leman that it is the payment of all taxes as well as the poll tax;
so that the rich must pay all the taxes.

Mr. FOX. Yes; but I am discussing now the poll tax. It will
not be contended that any man who voluntarily disfranchises
himself by the nonpayment of a capitation tax is denied the right
of suffrage.

Mr. BREAZEALE. Has the right of the poll-tax requirement
been recognized by Congress?

Mr. FOX. I would say to my friend that so far as that is con-
cerned the franchise clause of the Mississippi constitution in
toto has been recognized by the Supreme Court of the United
States and passed upon in the case of the State of Mississippi v.
Williams, in which there was no other question raised than the
single question as to whether the suffrage clauses of the constitu-
tion of Mississippi were in violation of any provision of the
Constitution of the United States. There was no other question
in the case, and it was decided that there was no citizen of Mis-
issippi disfranchised on account of race or color.

Now then, as to the payment of a poll tax as a qualification.
The law of Mississippi requires that all poll-tax delinquents in
each county shall be published in some newspaper, and I have
here several county papers from Mississippi to which I wish to
call attention. There are 3,000 in one county—nearly 3,000; I
counted them; and I will submit it to the inspection of any gen-
tleman—who voluntarily disfranchised themselves; that is, those
of them who possess the other requisite qualification. Here is
another paper.

I will call the attention of my friend from Michigan to the list
in this paper, which shows which are colored and which are white
who disfranchised themselves voluntarily by the nonpayment of
the poll tax, and there are more white men in that list than colored
men. There is no race question in it. Those marked with a
"C" are colored; those not so marked are white. Some of them
do it by carelessness and some of them do it designedly, because
they would rather keep the $2 than to vote.

Now, I want to say to the House that so far as the effect of
this constitution is concerned on the colored race, the wisdom of
Mr. Isham T. Montgomery, a leading negro, who was a member
of the constitutional convention which framed that constitution,
and who voted for the franchise clause, has been fully vindic-
cated. He voted for the franchise clause and argued that it
would be for the elevation of his own race.

That man to-day is an appointee of President Roosevelt, hold-
ing a prominent Federal office, and living at the capital of Mis-
sissippi. He is a man of high character, a former servant of
Jefferson Davis, and a stalwart Republican; and if any man in
this House will take the pains to consult him he will learn some-
thing about the conditions there and learn that the result of the
adoption of this constitution is not only satisfactory to the colored people in Mississippi, but it is also highly advantageous to them.

Mr. Chairman, the last census shows that out of about 200,000 negro men in Mississippi of voting age, 97,000 of those can read and write. Think of it—50 per cent of the negroes of the State have qualified themselves to vote, so far as the educational clause of the constitution of Mississippi is concerned, and they have done it by the generosity of their former masters. They pay no taxes. Even the capitation tax which goes to the support of the school system of the State is voluntary, and I will say—and if I make a mistake about it, I hope some of my colleagues will correct me—that at least 95 per cent of the taxes paid for the support of the public schools, of which the negro race has all the advantages of the white, are paid by the white people of the State. And I want to say another thing, that Mississippi, without exception, pays more per capita to the support of public education, according to her wealth, than any State of the Union, Massachusetts not excepted.

Do not take my word for it. I telegraphed the superintendent of public education in the State of Mississippi the other day to send me the appropriations made for public education in the State of Mississippi, shared alike by white and black, and he sent me these figures:

Appropriations by the State of Mississippi for educational purposes, 1903 and 1904.

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Summer normals</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>Interest on Chickasaw school fund</td>
<td>111.146.19</td>
</tr>
<tr>
<td>Common schools</td>
<td>2,560.000.00</td>
</tr>
<tr>
<td>University of Mississippi, on land fund, both 1903 and 1904</td>
<td>12,000.00</td>
</tr>
<tr>
<td>University of Mississippi, interest on land fund and seminary fund, both 1903 and 1904</td>
<td>81,446.19</td>
</tr>
<tr>
<td>Agricultural and Mechanical College</td>
<td>151,373.82</td>
</tr>
<tr>
<td>Agricultural and Mechanical College, interest account</td>
<td>37,132.50</td>
</tr>
<tr>
<td>Agricultural and Mechanical College, deficit on textile school</td>
<td>38,323.14</td>
</tr>
<tr>
<td>Alcorn Agricultural and Mechanical College</td>
<td>43,250.00</td>
</tr>
<tr>
<td>Alcorn Agricultural and Mechanical College, interest account</td>
<td>35,184.54</td>
</tr>
<tr>
<td>I. L. and C.</td>
<td>134,628.00</td>
</tr>
<tr>
<td>State Normal, Holly Springs</td>
<td>4,500.00</td>
</tr>
</tbody>
</table>

Total ........................................................................... 3,241,035.63

And I will say that many more negro children attend the common schools than white. The census report will show that very many more negro children attend the public schools than white children.

Now, under our system each town of over 1,000 inhabitants has what we call a separate school district, in which we raise our own funds, levy our own taxes, and retain the money for the support of the school in that town. I wired the superintendent for information as to the amount expended in the separate school districts which are not included in this statement here, and he wires me that the total receipts are $412,449 and the disbursements $383,000 for last year. So it aggregates nearly $4,000,000, equally shared by both races.

Another thing. Much has been said about the "understanding clause" of the constitution of Mississippi. I hold here a contribution to the Mississippi Historical Society by a great lawyer who was a member of the convention that framed the constitution, and who voted against what is called the understanding clause: that is, the clause providing that if anyone is not able to read and
write, but shows that he understands the constitution of Mississippi, he may register and vote, notwithstanding his illiteracy.

That has been attacked as a subterfuge. Here is a paper which I shall be glad to submit to any gentleman who would like to read it, entitled "Suffrage in Mississippi," in which he says that although he voted against that provision of the constitution, its wisdom has been vindicated by experience, and that there were more negroes in the State of Mississippi who had qualified under the understanding clause and who had registered and were now voting than whites.

I live in a county containing a large majority of negroes. I telegraphed the circuit clerk of that county, who is ex officio the registrar of voters in the county, for information as to how many whites and how many blacks had qualified under the understanding clause, and he wired me that since the adoption of the constitution in 1892, there had been in this county 5 white and 14 colored men registered under the understanding clause.

The CHAIRMAN. The time of the gentleman has expired.

Mr. WILLIAMS of Mississippi. I ask unanimous consent that my colleague may have the privilege of extending in the Record and of inserting certain documents and papers.

The CHAIRMAN. The gentleman from Mississippi asks unanimous consent that his colleague may extend his remarks in the Record. Is there objection?

There was no objection.

Mr. WILLIAMS of Mississippi. I yield five minutes more to my colleague.

Mr. FOX. It should be remembered that under the Constitution representation in Congress is based on the entire population, without regard to age, sex, nativity, color, crime, pauperism, or citizenship. If it is important that those who vote should be entitled to representation in Congress, it is still more important that those who do not vote should have such representation, because in no other way do they have any voice in the Government.

In the State of Massachusetts, according to the last census, there are 843,465 males over 21 years of age. Of these only 367,283 voted in the last Congressional election. There are 347,000 foreign-born males over 21 years of age in that State. Of these only 146,000 are naturalized; so that there are over 200,000 men of voting age in that State who are not citizens and can not vote. Yet they are all included in the estimate of population made in order to determine the number of Representatives to which Massachusetts is entitled.

According to the last census there are 53,000 males over 21 years of age in that State that are illiterate and therefore disfranchised. There is no way of determining the number of paupers or of foreigners who can read and write their own language and can not read and write the English language, and who therefore can not vote under the Massachusetts constitution. From these figures it is evident that Massachusetts would suffer a loss of several Congressmen if her representation should be reduced in proportion to the number of her population who are disfranchised.

The committee have listened very patiently to me, and I do not care to occupy much further time. The other day in this House, after great discussion and deliberation, without a single dissenting vote, in order to protect the civilization of the Pacific
slopes, we passed a bill excluding from our shores and our ships
the Chinese, a people who in many respects possess the highest
and the oldest civilization on earth.

The representative of that country at this capital to-day is the
peer of the representative of any nation on earth, so far as intel-
ligence and high character are concerned, and he is a prime fa-
vorite with everybody in Washington, so far as I know. I do not
exaggerate when I say that there are 10,000 Chinese and more
who are in every respect the peers of Minister Wu. I voted for
that bill because I thought the gentlemen of the Pacific slope un-
derstood conditions there better than I, and I was willing that
they should solve their own local problems.

Now, what I want to ask in all fairness is, that if it is right to ex-
clude not only from citizenship, but even from temporary resi-
dence in this country, these Chinese, in order to protect the civi-
лизation of California and Oregon, how much more justifiable is it
to exclude from the right to vote, from the mighty and I might
almost say the almighty power of the ballot, the governing power,
those who have no qualifications for it, the ignorant and the
criminal, in order to protect the civilization of Massachusetts
and Mississippi? [Applause on the Democratic side.]