AN DER W JOHNSON ON CIVIL RIGHTS.

The objections of Mr. Johnson to the bill recently passed by Congress to secure the civil rights of the people of the United States are entitled to consideration on account of his office, whatever we may think of their intrinsic value or of his personal capacity to judge of such questions. There are few public men whose opinion upon a point of public policy has had such effective; and Mr. Johnson's, and we are inclined to believe that they are of unchangeable importance.

The President's objections are two-fold: first, on constitutional grounds, and second, on grounds of policy. We propose to discuss the two classes of objections separately.

The provisions of the bill which, Mr. Johnson thinks, violate the Constitution are three. First, the abrogation of State laws discriminating between the civil rights of persons differing in color. Second, the provision for the punishment of persons violating the first section of the bill itself. Third, the new jurisdiction conferred upon the Federal courts.

The first objection, of course, the principal one. Congress has interpreted the Constitutional Amendment abolishing slavery as authorizing the enactment of laws to prevent the continuance of unequal State laws, which were notoriously incidents of the slaveholding system. The President seems to hold a different theory. We had supposed that, under the rule of construction adopted by the Supreme Court of the United States, there could no longer be any doubt that Congress could adopt any measures that might probably be necessary to exercise the powers conferred on it, or to carry out the mandates of the Constitution. Now, it is true that men might be deprived of the civil rights mentioned in this bill, and yet not be actually enslaved. But it is also true that a man might be subject to be whipped by any and every other man, and yet not be a slave. He might be compelled to work without wages, and yet not be, within the definition of the Constitution, a slave. He might have no rights over or in his wife and children, and still not be a slave. He might be prohibited from learning to read, from learning a trade, from travelling outside of his own village, from selling the fruits of his labor, or from owning the coat on his back, and yet not be a slave. But put all these burthens together upon one man, and wherein does he differ from a slave?

If, then, Congress is to have power to interfere with slavery at all, it must have the power to remove every shackle which belongs to the policy of slavery and which constitutes a link in its chain. And surely there can be no doubt that, upon the deprivation of civil rights and upon a system of unequal punishments, a new scheme of slavery might be founded. Slavery for crime is not prohibited. Suppose, therefore, that a State should enact that it should be a felony for any colored person to remain in the State for ten days, and that the punishment should be slavery for life? Such a statute in substance like this has been passed before and enforced, and might well be again. Or, suppose that a law should be passed absolutely prohibiting colored persons from suing or defending suits. How could they escape out of slavery in such case? Or, suppose the mild and beneficent law of reconstructed and loyal (?) Mississippi, which absolutely forbids colored men from owning or leasing real property, should be enlarged by adding a section making it a misdemeanor for them to trespass upon any land which they did not own or hire (which is the law of this State), how easy it would be to reduce the whole colored population to slavery. Add to this the laws which have already been passed in several reconstructed States for the apprenticeship of colored children without the consent of their parents, irrespective of their ability to support them, and what more is needed to constitute slavery more brutal and destructive, by far, than the old and undisguised system? It would be slavery without the salutary check of a pecuniary interest in the life of the slave; and the lot of the colored "freedman," like that of the Cuban emancipado, would be ten times worse than that of the old-fashioned slave. If Congress has no power to hinder these plans from being carried out, the Constitutional Amendment is an imposition and emancipation a farce. It is true that, in doing this, Congress may possibly adopt measures that, in some instances, will effect more than is really necessary for the purpose. But this is true of all laws. It is almost impossible to frame a statute which shall do all that its authors intended and yet not do a hair's-breadth more.

The next objection is to the second section of the bill, which provides for the punishment of "any person who, under color of any law, statute," etc., subjects, or causes to be subjected, any person to the deprivation of rights conferred on him by the first section. This, Mr. Johnson says, punishes legislators who pass unequal laws, and judges who expedite. As far as legislators are concerned, the objection is utterly unfounded as to remind us of a kindred passage in the veto of the Freedmen's Bureau bill, in which the language of the bill was directly fastens in order to make a forcible point. How is it possible that legislators can be said to act "under color of law?" They made law, they do not act under it. It might as well be claimed that who all voted for a legislature which passed such laws are punishable under this bill. Nor do we think that under any fair interpretation judges could be held to fall under the penalties of the bill. The whole phraseology of the section contemplates acts, not decisions, and is clearly aimed at ministerial officers, such as sheriffs, constables, etc. As to them, even Mr. Johnson had not the hardihood to deny the power of Congress to punish their acts. Mr. Johnson finds something in the third section which confirms his views as to the meaning of the second section. Our obtuseness is such that we cannot perceive the faintest glimmerings of light in that direction, and cannot therefore enter upon an argument for which we do not discover the least foundation.

It is, of course, possible to put upon the provisions of this or any other bill a construction as forced as that which the President has adopted in reviewing the civil rights bill. Under such a method of interpretation, scarcely any penal law could stand. Thus, we take at random the statute of this State in respect to counterfeiting. It declares, in the plainest terms, that every person who "counterfeits" a gold or silver coin, current by custom or usage, shall be punished as for forgery. Many boys amuse themselves by taking moulds of coins, in lead or other soft metals, without, of course, the slightest idea of using them to defraud, and without the possibility of doing so. Assuming Mr. Johnson's mode of interpretation, all these children are liable to be sent to the State prison. So the proposed penal code of this State makes it a misdemeanor willfully to delay a public officer in the discharge of his duty. Upon Mr. Johnson's theory, it would follow that if this provision is adopted it will be a crime to stop a constable, on his way to an arrest, merely to ask him the time or to shake hands. Absurd as these illustrations are, they are not a whit more absurd than the President's construction of the second and third sections of the civil rights bill. Yet it is this branch of his argument which, the New York Times is of opinion, must have made Chief-Justice Pollock and Judges Harris and Trumbull "blush" to find their legal learning surpassed by a layman. We can easily conceive that they blushed on reading the veto message; but, we fancy, from a very different reason from that hinted at by the Times.

The last of the constitutional objections is, that the Constitution does not allow an extension of the judicial power of the United States to the cases of which, under this bill, the Federal courts are to take cognizance. This objection depends entirely upon the first one. If the bill is in other respects constitutional, then Congress has unquestionable power to give jurisdiction to the Federal courts over all cases arising under the bill. This is plainly shown by the very section of the Constitution which the President cites on this point.

We have thus briefly reviewed the President's objections to the constitutionality of the bill, and trust that we have made it clear that they are entirely unwarranted. We now approach the other class of objections, which we find much more difficult to treat with respect. They arise from the demarcatron and the changes made in the
Rogers, of New Jersey, when addressing his constituents, than of the President of the United States addressing the whole continent, and, indeed, the whole civilized world!

The first objection, on mere grounds of expediency, which is raised by the President, is in the clause declaring persons of color to be citizens of the United States. The simple fact of his making this objection is a melancholy proof of Mr. Johnson's rapid retrogression from liberal principles. It is only a few months since he publicly addressed a crowd of colored men as his fellow-citizens. Now he is disposed to treat them as aliens and foreigners. Nay, he thinks they are not even fit for admission to citizenship as foreigners. Adopting one of the meanest and most untruthful arguments of mob orators, he asserts that the bill makes a discrimination against "intelligent, worthy, and patriotic foreigners, and in favor of the negro," because it admits the latter race, which has been here for two hundred years, to citizenship without waiting five years more, or going through the form of naturalization, which is notoriously so administered as to have become a fiction and a sham.

The President's mania for State-rights is amusingly exhibited in dealing with this question. After admitting that the Federal Government has exclusive control over the subject of citizenship of the United States, he objects to the admission of negroes to this privilege on the ground that "the people of the several States" have not expressed their conviction of its propriety. What have the people of the several States to do with it? The people of the United States have expressed their convictions, in the only legitimate way, by the votes of Congress. That ought to suffice even for Mr. Johnson.

Another objection is made to the authority given to the Federal courts to appoint commissioners without limit as to number, and to these commissioners to appoint persons to execute warrants and other processes. To Mr. Johnson's heated imagination a cloud of police, multitudinous as the frogs of Egypt, arises to darken the land. Yet all these provisions were literally copied from a somewhat famous statute passed in 1850, and for which Mr. Johnson himself voted. Nor was it ever found that, under that law, any extraordinary number of persons was appointed. In fact, other acts of Congress, which have been in force for more than fifty years, contain similar provisions; and the worst that can be said of the clauses which excite the alarm of Mr. Johnson is, that they are needless repetitions of existing laws.

The same answer may be made in substance to Mr. Johnson's objections to the "irresponsibility" of those agents, to the fees allowed them for their services, to the possibility of their abuse of power, and to their interest in creating mischief for the sake of fees. All these objections apply to every marshall, sheriff, and constable in the land. They are incidental to every judicial system. Sheriffs would make a poor living if there were no litigants; therefore, let all sheriffs be removed, so as to put an end to litigation. Policemen would be all discharged if there were no thieves or rioters. Therefore let all policemen be discharged, and the land will be immediately cleansed from theft and riot. The argument is profound, but not quite convincing.

The remaining objections to the details of the bill refer to the provisions requiring the courts to sit in any place appointed by the President, and authorizing the use of the army, navy, or militia to enforce the law. It is only necessary to say, as to these points, that similar provisions exist in other laws of the United States, and of the "several States" for whose opinion Mr. Johnson is so anxious. The former provision is familiar law in this State, and the latter provision is copied from another Federal statute for which Mr. Johnson voted in former days.

We have striven to speak temperately of this extraordinary message, and to repress the feeling of impatience which its dis- honest ebulions and unworthy clap-trap have aroused. But justice to the subject demands that we should plainly express our judgment that this message is one of the most discreditable state papers known to American history. Taking into view all the circumstances in each case, Chief-Justice Taney's celebrated opinion becomes almost respectable, and other reconstructed States, which the President has been compelled, by his own sense of decency, to set aside, he has the hard- ship to say that the contending legislation contemplated by the bill is not likely to occur. In the face of the same notorious facts he asserts that there has not been, nor is there likely to be, any attempt to revive slavery by the people of any State. So, after expressly denying the power of Congress to secure to the freedmen any right to sue, to testify, to hold property, to make or enforce contracts, to marry or be given in marriage, he calmly assures Congress that he will "cheerfully" co-operate with them in the enactment of all constitutional measures to preserve to the freedmen their civil rights! In the name of heaven and humanity, what are civil rights if those which we have enumerated are not included under that term?

THE EXECUTIVE LEGISLATING.

There has been such a glamour thrown round the presidential office by the war that a great many people seem to have totally forgotten the precise nature of the President's relations to Congress and the country. And it is because they have forgotten it that the present conflict between the legislature and the Executive possesses much political importance. We are, in reality, witnessing at this moment, in the different orders which convulses the country, the legitimate result of the departures from constitutional usage into which we were driven in the excitement and confusion of 1861. Nobody can, perhaps, be fairly blamed for the irregularities into which the Government then fell. They were the natural result of the alarm and anxiety and distrust of everybody and everything by which the nation was pervaded. But there is no denying the fact that our political machine revolved a severe jar on the day when Mr. Lincoln was allowed, of his own mere motion, to exercise the very highest power of government, the power of suspending the habeas corpus. Congress ought not to have lost a moment after its meeting in asserting its sole exclusive authority to meddle for any purpose whatever with the safeguards placed by the common law and the Constitution round individual liberty. The tameness with which it suffered this prerogative to be taken from it, and with which it submitted to divers other assumptions by the Executive of functions peculiarly legislative, are now bearing their legitimate fruit. People begin to see at last that disregard of the forms of law is a two-edged sword, and that although it may in the hands of a good man strike great blows for freedom, it may on the morrow, and in the hands of a bad man, strike almost as effective blows for slavery. From Mr. Lincoln's right to suspend the habeas corpus by proclamation Mr. Johnson's right to restore it by proclamation is a fair deduction. So that under this precedent Congress has practically lost all control over the Southern States. Mr. Johnson may to-morrow restore the writ throughout the South without consulting the legislature; and this done, the Unionists and negroes would be absolutely at the mercy of the secessionists.

A more remarkable example still of the mental confusion remaining from the war is shown in the course which Mr. Johnson has thought himself authorized to take in the matter of reconstruction. When the Southern armies had surrendered, and all appearance of resistance had ceased, the "war power" of the President permitted him simply to provide security for life and property while the people of the States were getting the machinery of civil government into order. The President with his "war power" is, and can only be, under any construction of it, the commander-in-chief of the armies of the United States, and on soil from which he has driven the public enemy; he exercises the power of a general in the field—no less and no more. The duties of a general in the field, after fighting is over, are the restoration of order and the creation of such means of administering justice as may be necessary and expedient. All else—the nature of the government to be established, the process by which it is to be established, the relations of the conquering to the conquered States—are matters for the decision of the legislature in all constitutional countries. If the President has power to settle these things, he is more a general than a general—he is a despot. If he unites in his own person legislative with executive powers, he is not the servant of the people, but its master. He exercises an authority such as has never been assumed before in any country calling itself free.