

# *President Johnson's Veto of the Civil Rights Act, 1866*

*The Civil Rights Act was the first major piece of legislation to become law over a president's veto. Johnson's veto message helped make the estrangement between Congress and the President irreparable. Johnson's constitutional arguments induced Congress to enact the Fourteenth Amendment, which forbade individual states to deprive citizens of the "equal protection of the laws."*

SOURCE: Richardson, ed., *Messages and Papers*, Vol. VI, p. 405ff.

WASHINGTON, D.C., March 27, 1866. 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 can not 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.... It does not purport to give these classes of 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 on the several excepted races 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 can not 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, when eleven of the thirty-six States are unrepresented in Congress at the present time, it is 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....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 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 to freedom and intelligence have just now been suddenly opened....

The first section of the bill also contains an enumeration of the rights to be enjoyed by these 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 punishment, pains, and penalties in common with white citizens, and to none other. 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 these can any State ever exercise any power of discrimination between the different races....

Hitherto every subject embraced in the enumeration of rights contained in this bill has been considered as exclusively belonging to the States. They all relate to the internal police and economy of the respective States. They are matters which in each State concern 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 natural 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 subjects 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 by law also declare who, without regard to color or race, shall have the right to sit 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 lawmaking 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....

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 preserved in the interest of public liberty; without assailing 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 insure to the several States the right of making and executing laws in regard to all matters arising within their jurisdiction, subject only to the restriction that in cases of conflict with the Constitution and constitutional laws of the United States the latter should be held to be the supreme law of the land....

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 *quasi* judicial duties. The fifth section empowers the commissioners so to be selected by the courts to appoint in writing, under their hands, one or more suitable persons from time to time to execute warrants and other processes described 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 ninth section authorizes the President, or such person 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 on where it is intended to operate....

In all our history, in all our experience as 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 infinitely 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 the relations existing exclusively between a State and its citizens, or between inhabitants of the same State—an absorption 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....

ANDREW JOHNSON.