CONSTITUTION OF KANSAS.

MINORITY REPORT

OF THE

SELECT COMMITTEE.

MINORITY REPORT OF THE SELECT COMMITTEE OF THE HOUSE OF REPRESENTATIVES.

Mr. THOMAS L. HARRIS, from the Select Committee to whom was referred the President's message concerning the constitution framed at Lecompton, submitted the following

VIEWS OF THE MINORITY.

On the 2d day of February last the President of the United States transmitted to both Houses of Congress an elaborate message, urging Congress to admit Kansas into the Union as a sovereign State in virtue of a so-called constitution said to have been adopted by a convention of delegates assembled at Lecompton, a copy of which constitution he also transmitted to the Senate, and which has been, by its order, printed and is now before the country.

Upon the reading of the message of the President in the House of Representatives, it was by that body—

"*Resolved*, That the message of the President of the United States concerning the constitution framed at Lecompton, in the Territory of Kansas, by a convention of delegates thereof, and the papers accompanying the same, be referred to a select committee of fifteen members, to be appointed by the Speaker; that said committee be instructed to inquire into all the facts connected with the formation of said constitution, and the laws under which the same was originated, and into all such facts and proceedings as have transpired since the formation of said constitution, having relation to the question or propriety of the admission of said Territory into the Union under said constitution; and whether the same is acceptable and satisfactory to a majority of the legal voters of Kansas; and that said committee have power to send for persons and papers."

The committee appointed by the Speaker under this resolution, after four brief sessions, being composed, with a majority of its members, of those who had resisted its adoption—

"*Resolved*, That the law of the Territory of Kansas providing for taking the sense of the people of that Territory upon the propriety of their applying for admission as a State into the Union, and the vote of the people under said law; also, the law of said Territory providing for a call of a convention in pursuance of the popular will thus expressed, together with the registration of voters and the apportionment of delegates to said convention under said act, and the election of delegates as officially certified to; the said constitution, as framed by said convention, and the vote on its submission under its own schedule and provisions as officially adjudged and announced, embrace all the laws and facts essential to the investigation of the questions submitted to this committee under the resolution of their appointment.

"*Resolved*, That while we do not consider the votes of the 4th of January last, on the submission of said constitution by the late territorial legislature, as having any material bearing upon the points of

this inquiry, yet we admit, receive, and allow to be filed with the other matters collected by this committee, the vote at that election as proclaimed and published by the officers of the legislature."

The majority of the committee adopted also a report based, not upon facts or evidence, but setting up speculations and surmises instead of reliable information; and sharp criticisms upon opinions heretofore advanced by distinguished citizens, rather than reasons why Kansas ought to be admitted into the Union under the Lecompton constitution.

The undersigned were prevented by the action of the majority of the committee from obtaining that reliable information which they desired and which they think they had a right to expect. Every avenue of inquiry was firmly blocked up, and we are compelled to follow the example which the majority have set in submitting our views upon the President's message and the meagre data already before the country, rather than upon authenticated facts collected by the committee.

The President in this message has departed from the usual precedents heretofore set by his distinguished predecessors, and instead of leaving Congress to decide the question with calmness and dispassion, he has argued in favor of the admission of the proposed State at great length and with unusual vehemence. It is believed that no similar interposition and feeling have ever been exhibited in favor of the admission of any State. Eighteen new ones have entered the Union, commencing in 1791, and coming down through nearly every successive administration, but in no case has the President ever taken sides in this earnest manner for or against the proposed action of Congress. If it shall be said that the case of Kansas is an unusual one, and required from the Executive an expression of his views and opinions, it will also be conceded that the California case was quite as unusual. But on that occasion the message of the President was as follows:

"*To the House of Representatives of the United States:*

"I transmit herewith to the House of Representatives, for the information of that body, an authentic copy of the constitution of the State of California, received by me from Gen. Riley.

"Z. TAYLOR.

"WASHINGTON, *February* 13, 1850,"

The undersigned cannot but contrast this brief message of General Taylor, following, as it did, the early precedents in like cases, with the lengthy argument of President Buchanan in favor of the Lecompton constitution, and they infer from it that the President feels an extraordinary solicitude that Kansas shall at once be admitted into the Union under the constitution transmitted. Not only does the President take this deep interest in the admission of Kansas, but the members of his cabinet are equally strenuous in urging their views upon the public in the shape of epistolary arguments in favor of the President's project. The multitude of those who hold official station at the hands of the President, or at the hands of his constitutional advisers, are induced to enlist their efforts to the same end, or if they differ in opinion and have independence enough to avow it, they are

promptly displaced, and others more accordant in judgment or more servile in character are appointed their successors. These very unusual proceedings and efforts on the part of the Executive, and the perturbed condition of the public mind, have induced the undersigned to give to the subject, under the instructions of the resolution of the House, their most careful attention.

In the message of the President, it is stated that "a great delusion seems to pervade the public mind in relation to the condition of parties in Kansas," and the President affirms that a portion of the people of Kansas are in rebellion "against the government under which they live." If it really be true that a great delusion pervades the public mind on this Kansas difficulty, it is greatly to be regretted. The American people pride themselves upon their intelligence, and their attention has been, for four years, most intently directed to Kansas affairs. Thousands of newspapers have been collecting every item of information relating to them, and spreading it before the public. Numerous and able reports have been made by committees of both Houses of Congress, composed of their ablest members, and of all political parties, which reports have been printed and scattered broadcast everywhere for public information. Volumes of sworn testimony and documentary evidence have been published and sent to every neighborhood and hamlet. Numerous messages from different chief magistrates have been sent to Congress and printed by millions of copies; and the late annual message of Mr. Buchanan, in which he elaborately discusses Kansas affairs, had been for two months in every man's hand and in every man's mind, and yet he informs us, in his message of the 2d of February, that this "great delusion" still "pervades the public mind" in relation to affairs in Kansas.

The undersigned think it is unfortunate that the President has failed to communicate to Congress the evidence upon which he founds his opinion of this pending delusion, and as for want of such evidence, we have failed to discern the existence of such "delusion;" it has consequently been impossible to ascertain its cause, its extent, or its character, or to propose an adequate remedy. That an anxious state of the public mind exists in Kansas concerning the action of Congress upon this constitution we can well believe. But we have not been able to learn that there is an existing rebellion in that Territory of such character as the President intimates. A rebellion is an open resistance to lawful authority by arms or otherwise, and the rebellion of a people must be open resistance to government by large, if not controlling masses.

The undersigned, after the most careful inquiry, (the majority of the committee refusing to hear any testimony on the subject,) have been able to gather no information that the people of Kansas are (or have been since the late October election, at least,) in resistance or even opposition to any law of Congress, or to the government of the United States; and there is ample evidence that the people of Kansas are in entire harmony with the territorial government, both legislative and executive, and are warmly and enthusiastically supporting both. If there has been any hostility to the territorial government, it has been

on the part of the Lecompton convention, and on the part of those who approve its action.

It is not untrue that, when an attempt was lately being made to subvert their territorial government by fraud, deceit, and crime, and to substitute in its place one disapproved by at least four-fifths of the people of Kansas, that people became excited and indignant. They denied the binding force of the new government; they protested against it at the polls by at least nine thousand majority of the legal voters, they protested against it in solemn and earnest legislative resolves.

The people in primary assemblies everywhere condemned it, while there has been scarcely one voice raised in its defence. The people of Kansas, by such majorities, deny the validity of the proposed new government, and say it is not theirs. They have sent their petitions and protests here, praying Congress not to force Kansas into the Union against their wishes. The have moved in arrest of judgment, and have thus opened the whole record to our examination. But all this is not *rebellion* to this proposed government, for there can be no attempt to resist a government until an attempt at least is made to enforce it, and no attempt has yet been made to enforce the Lecompton constitution. There being, then, no effort made to resist the laws of Congress, the laws of the territorial government, or the proposed Lecompton constitution, it is not easy to discern the ground upon which the President rests the charge of an intense *disloyal* feeling and an exciting rebellion among the people of Kansas. The President is speaking of the existing condition of things at the time of his writing, and so are we.

With deference to the President it is submitted that directly the reverse is the fact, and had we been permitted to take testimony we could have established this position by indubitable evidence. Nor can it even be said that those who have thought favorably of the so-called Topeka constitution are in *rebellion* against their government. It is now more than two years since that instrument was formed. There was, originally, neither treason nor rebellion in its origin or provisions. It was sent to Congress, and on the 24th day of March, 1856, formally presented in the Senate by General Cass, and, upon his motion, referred to the Committee on Territories and printed. Its formation could hardly have been an act of disloyalty or rebellion. So far as its adoption by the people, on a submission to a vote under the auspices of the convention that framed it could give it vitality it was given, but no further. And in this respect it followed examples before set, which had received the approval of Congress. General Cass would hardly have presented an embodiment of treason and rebellion to the Senate of the United States. The improper action of Governor Robinson (as he is called by the President) and the Topeka legislature are, by the undersigned, emphatically condemned. Nor is it believed that their action has met the approval of any considerable number of the citizens of Kansas. But we are not advised that any attempt has been made to put the Topeka government into practical operation. Should such attempt be made it would be the duty of the territorial government to resist it and put it down, but until such an attempt is made there is no well-grounded cause of alarm,

either to the President or to the country. Yet the great argument in favor of the admission of Kansas as a State seems founded upon the supposed rebellious character of her people; a supposition that can rest only upon events long since transpired, and upon opinions long ago exploded. But were the President's opinion correct it would, instead of a reason for the admission of Kansas into the Union, be a conclusive one against it.

The President, in discussing the organic act, says:

"That this law recognized the right of the people of the Territory, without any enabling act from Congress, to form a State constitution, is too clear for argument. For Congress 'to leave the people of the Territory perfectly free,' in framing their constitution, 'to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States,' and then to say that they shall not be permitted to proceed and frame a constitution in their own way without an express authority from Congress appears to be almost a contradiction in terms."

This reasoning the undersigned believe to be more specious than sound. It was not necessary that the rights of the people of Kansas to frame a constitution should be recognized by an act of Congress. They could do this without such act, and apply for admission under it, and the admission or rejection of the proposed State would rest solely in the discretion of Congress. So if Congress should consent that they might frame a constitution, and send it up as an application for admission, this would not render it obligatory upon Congress to admit the proposed State, when such constitution might be presented here, *whatever that* constitution, and the circumstances attending its formation might be. The powers and rights conferred by the Kansas act were such as related to its *territorial condition*, and to that end Congress conferred all the powers it possessed upon the people of Kansas. The organic act contained also certain stipulations, that might be held as a pledge and contract with the people of Kansas, in regard to their rights when they come to be admitted into the Union. But it did not provide that Kansas should come into the Union *whenever* the people thereof might desire, nor *however* they might desire, much less that they might come when *one thousand* of her people *might desire to come*, and *ten thousand* desire *not to come*. If so, then Kansas is a State in the Union now, and our differences are without foundation. Ohio had an *enabling* act, and under it a State government was formed, and she came into the Union without further legislation.

If the original Kansas act was a like enabling act, why does not Kansas enter the family of States, as the equal and peer of the other States, and not remain higgling for Congress to unbar the door and bid her enter? A moment's inspection of the constitution sent to Congress will satisfy us that its framers did not consider that they had the right to form a State without the assent of Congress. This is evident from the fact that the constitution denies to itself any validity of force, until the State shall be admitted by Congress into the Union. It does not allow any of the officers, executive, legislative, or judicial, to enter upon the discharge of any duties, "until after the admission of Kansas as one of the independent and sovereign

States." This provision fixes the time *when* the authorities of the proposed State shall assume their functions. The constitution also provides that, "all officers, civil and military, holding under the authority of the Territory of Kansas, shall continue to hold and exercise their respective offices until they shall be superseded by the authority of the State." These clauses clearly show that the convention claimed no right to exercise, and did not exercise, any power as a State, but having framed their constitution, they sent it to Congress as a petition, and they now ask us to recognize that constitution *as creating a State*, by the admission of such State into the Union. As a petition, we think it should be considered and acted upon, but that the framers of that constitution, or the people whom they claimed to represent, have a *right* to set up a State government in or out of the Union, we cannot admit. No such right has ever been conceded to them by Congress, nor claimed by the people of Kansas.

By looking at the language of the President, above quoted, it will be seen that, in order to give effect to his argmment, he presents it in this form. He says:

"For Congress to leave the people of the Territory perfectly free, *in framing their constitution*, to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States, and then to say that they shall not be permitted to proceed and frame a constitution in their own way, without the express authority of Congress, appears to be almost a contradiction in terms."

But this, "almost contradiction in terms," is entirely removed when it is seen that the President, to make out this "contradiction in terms," has inserted in the sentence the words "*in framing their constitution*," which words are *not* in the act of Congress, nor is their import to be implied from the language there used. Not only are the words thus employed by the President *not found* in the organic law but it is not known that any one contends that the people of Kansas "shall not be permitted to proceed and frame a constitution in their own way without the express authority of Congress." And his excellency is quite as unfortunate in stating the argument of those who oppose the admission of Kansas under the Lecompton constitution as he is incorrect in stating the language and intent of the Kansas-Nebraska act. That act provides that "*the people of the Territory* shall be left perfectly free to form and regulate *their* domestic institutions in their own way." Whose institutions? The institutions of "the *people of the Territory*." Is a constitutional State government an institution for the "*people of a Territory?*" It is a very necessary one for the *people of a State*, but one with which the people of a Territory have nothing to do.

While, therefore, the people of Kansas, or any part of them, have a right, by way of petition, to ask Congress to recognize such State organization as they may propose, and while by the stipulations of the organic law they may "come into the Union with or without slavery, as their constitution may prescribe at the time of their admission," yet, as there could be no *irregularity* in their proceedings which would prevent Congress from hearing their statement of griev

ances and granting adequate redress, even by the admission of the State into the Union, so, on the other hand, there can be no technical *regularity* in forming a constitution that can make it incumbent upon Congress to admit such State as a matter of indisputable right. Whenever Congress is asked to act and provide for the incoming of a new State, whether by an original enabling act or a subsequent act of recognition, (as in this case,) it will look into all the circumstances and decide the question in view of the great results which are to follow its legislation, both to the people who inhabit the proposed State and to all the other States of the Union. And this duty of Congress is in no wise lessened by the acknowledged right of *the people of a Territory* to form and regulate *their* domestic institutions in their own way. This acknowledged right does not confer that other great right and privilege of becoming, at any time and under any circumstances, a State of the Union, and participating in shaping and controlling the interests of all the States in our confederacy.

The majority of the committee concur with the President in the opinion that "it is impossible that any people could have proceeded with more regularity in the formation of a constitution than the people of Kansas have done." Differing, as we do, entirely from this opinion, we propose to examine and test its correctness. "The people" of a Territory, or any political community, are the *whole body of its citizens*. No particular class, organization, or party, inside of the whole body, can justly be called "the people." If, from any cause, this "whole body" of citizens are prevented from participating in any popular function, and it is performed by a part only, it cannot be said that such function is the act of "the people." Before it can be said, therefore, that "the *people of Kansas*" have regularly proceeded and formed their constitution, it must appear that the whole body of the citizens of Kansas had free opportunity, without fear and without constraint, to participate in its formation. What now are the facts?

After the passage, in 1854, of the act of Congress creating the Territory, parties of widely different views concerning domestic slavery hastened to occupy its choicest and most eligible portions. They went resolutely determined to accomplish each an opposite purpose, and collision and violence almost immediately ensued. At the first election for members of the territorial legislature, on the 30th day of March, 1855, the pro-slavery party succeeded. The then governor (Reeder) gave certificates to the members elect, and by his action and that of the legislative bodies the territorial government went into full operation under pro-slavery auspices.

Whether that election was fair or unfair, just or fraudulent, it is not essential to our present inquiry to decide. Certain it is that it was conducted in a most turbulent, disorderly, and violent manner. The whole mass of voters were of recent coming to the Territory, and large numbers doubtless voted upon both sides who shortly afterwards left for other parts and never returned. Such was doubtless the case with many adventurers from the eastern States, and such is known to be the fact in regard to large bodies of men from Missouri. The defeated party believed they had been beaten by fraud and violence, and have always so asserted; but the action of Governor Reeder and the

legislative bodies closed the question to us on the present issue, and had the proceedings of that legislature been just or lawful he would have been spared any allusion to it whatever, and we believe the people of Kansas would have taken their own wrongs in hand and redressed them legally at the ballot-box.

But the legislature thus elected assembled and proceeded to enact a code of laws, many provisions of which have been denounced by men of all parties as disgraceful and infamous. They were the natural consequence of a triumph of one party over the other, between whom so much bitterness of feeling and so many acts of violence had occurred. Our purpose now is to refer only to the eleventh section of the law concerning elections. It is as follows:

"SEC. 11. Every free white male citizen of the United States, and every free male Indian who is made a citizen by treaty or otherwise, and over the age of twenty-one years, who shall be an *inhabitant* of this Territory, and of the county or district in which he offers to vote, and shall have paid a territorial tax, shall be a qualified elector for all elective officers; and all Indians who are inhabitants of this Territory, and who may have adopted the customs of the white man, and who are liable to pay taxes, shall be deemed citizens: *Provided*, That no soldier, seaman, or marine, in the regular army or navy of the United States, shall be entitled to vote, by reason of being on service therein: *And provided further*, That no person who shall have been convicted of any violation of any provision of an act of Congress entitled 'An act respecting fugitives from justice, and persons escaping from the service of their masters,' approved February 12, 1793; or of an act to amend and supplementary to said act, approved 18th September, 1850; whether such conviction were by criminal proceeding or by civil action for the recovery of any penalty prescribed by either of said acts, in any courts of the United States, or of any State or Territory, of any offence deemed infamous, shall be entitled to vote at any election, or to hold any office in this Territory: *And provided further*, That if any person offering to vote shall be challenged and required to take an oath or affirmation, to be administered by one of the judges of the election, that he will *sustain* the provisions of the above recited acts of Congress and of the act entitled 'An act to organize the Territories of Nebraska and Kansas,' approved May 30, 1854, *and shall refuse to take such oath or affirmation, the vote of such person shall be rejected.*"

What was the object of these unusual provisoes? It was not to ascertain if the person offering to vote was a free white male citizen of the United States, or a free male Indian made a citizen by treaty or otherwise, or whether such were over the age of twenty-one years, or *inhabitants* of the Territory, or had paid a territorial tax, or had previously voted at the same election, or had ever been convicted of infamous crimes or felonies. The oath required was not a test of the qualification of voters, nor was it intended to be. Its plain purpose and *avowed object* was *to drive from the polls and disfranchise a very large portion of the people of Kansas.* That such was the purpose, and the avowed purpose, of this law we have the most reliable information, and we believe we could have proved it by sworn witnesses of

undoubted veracity had we been allowed to do so. It is true, the qualifications of voters was a matter for the legislative assembly to determine, but this provision is not one of qualification at all. It in no way relates to the qualifications prescribed; it is not general in its application, and is but an invidious and unjust mode of disfranchisement, reaching only the person challenged. It required every such person, in advance of being legally called upon to act, to swear that he would *sustain* the provisions of the fugitive slave laws of 1793 and 1850. There are thousands of citizens in all parts of the Union that believe it to be the duty of the *States* to provide for the rendition of fugitives, and that the law of Congress is unconstitutional. Others, who would be willing to act, if called upon by the officers of the law, to aid in the capture of fugitives, yet, at the same time, they would scorn and refuse, as a test of their right to vote, to be sworn into a body of catch-polls to pursue, capture, and return vagabond slaves. Others, and thousands of those, too, south as well as north, are conscientiously opposed to these fugitive slave laws, and desire their modification or repeal. But, according to this Kansas election law, every man *challenged* was required to swear, in effect, not only that he would aid in enforcing those laws, but that he would *sustain, maintain*, and continue them as they are forever. He must do this or lose his vote. If the free-State men had seized the first Territorial legislature, and had passed a law requiring every voter, when challenged, and before he should be allowed to vote, to swear that slavery was a moral, social, and political evil, and that he would forever oppose, by all lawful means, its introduction or establishment in the Territory, it would have been no more unjust to the pro-slavery party than was that law already quoted to the free-State party. It was not only unjust, but it was in violation of the spirit of the act creating the Territory, as well as the Constitution of the United States. Its object was not the purity of elections, but the perpetuation of power in the hands which then held it.

But it seems unnecessary to discuss it further. Its like had never before been heard of in a free country; and so generally did its monstrous and despotic character meet with public condemnation that in February, 1857, it was, with several other statutes, quite as disgraceful, repealed by the same party that had enacted it. This, however, was not done until the effects of its operation had become deep and permanent in the affiairs of the Territory. The same legislature which passed the law we have just considered, passed also an act in July, 1855, "for the call of a conventionto form a State constitution," by which the sense of "the people," for and against a convention, was to be taken "at the general election to come off in October, 1856," at which "all persons qualified by the laws of the Territory to vote for *members* of the general assembly *should* be entitled to vote for or against said convention," but subject to the exceptions and challenges provided in the eleventh section of the election law already quoted. Thus it will be seen that the "sense of the people" provided to be taken was in fact not the sense of "the whole people," but the sense only of that portion who were not disfranchised by the act of legislation we have considered. "The people" were not left free to exercise

their rights, but a large portion of them were, by the act of the legislature, (as it was intended they should be,) driven from the polls, and their views choked out by test oaths unlawfully and unjustly forced upon them by the party that had succeeded in making itself dominant in Kansas. At the same October election, and under the same law, a new house of representatives was chosen, the council still holding over under the first election. The result of this election was in no doubt. The act of the legislature had done its work. The free State men, unwilling to submit to the insults, indignities, and disabilities imposed upon them by this law, withdrew from the polls. All opposition to the pro-slavery party was at an end, and its candidates were unanimously returned. The territorial power seemed entailed in fee to the party in possession, and this law intended to make that possession perpetual.

The vote upon the question of "convention" or "no convention" was a meagre one of a few hundreds only. We have not been allowed to procure the official returns of this vote, nor are we aware that any such ever was made or published. We are informed by what we rely upon as good authority that the vote was a very trifling one, very few taking any interest in it whatever, and but a few hundred only were cast in the entire Territory. It is true that the majority assert in their resolutions that this vote is "important," yet they have taken good care not to obtain it officially or otherwise. The majority say "the vote was *almost unanimous* for the legislature to call a convention and to define its duties. But few votes were cast against it." They might have added with equal truth "but few were cast for it." "The people" took no part in that election; and it is incorrect to say that by it the sense of the people was taken and found to be "for a convention."

The whole thing would be a farce were it not a stupendous political outrage. We have thus examined these laws under which the Lecompton constitution originated, and the facts connected with the same, up to this point, because we were directed to do so by the order of the House, and because the President and a majority of the committee lay great stress upon them, as having been fair, legal, and regular, and as having afforded "the people" of Kansas full and free opportunity of deciding against a convention, had they been disposed to take part in the elections. With entire confidence we pronounced this alleged taking of the sense of the people to have been *unfair*, *irregular*, and *illegal*, and the pretended return (if there ever was one) *not the voice of the people of Kansas*. The law under which the election of 1856 was held, and the election itself, were fraudulent, deceitful, and unjust, and neither are entitled to any respect whatever. Upon the result of this simulated vote, however, the legislature, (elected under the same loose enactment,) on the 19th of February, 1857, passed, over the veto of Governor Geary, "An act to provide for the taking a census and the election of delegates to a convention." The first section of the law enacted—

"That for the purpose of making an enumeration of the inhabitants entitled to vote under the provisions of this act, an apportionment, and an election of members of a convention, it shall be the duty of the

sheriffs of the several counties in Kansas Territory, and they are hereby required, between the first day of March and the first day of April, eighteen hundred and fifty-seven, to make an enumeration of all the free male inhabitants, citizens of the United States, over twenty-one years of age, and all other white persons actually residing within their respective counties," &c.

This act clearly required that there should be an enumeration of "*all* free male inhabitants," &c. Was this law complied with? It will be borne in mind that all the offices of the Territory were in the hands of that party which had first seized the reins of government. These officers were to take this census and make the registration, but so imperfectly or corruptly was it done in some counties, and so large a number were omitted altogether in others, that the force and effect of the law were destroyed. There were registered under this law 9,251 voters, whether fairly or not may be judged from the conduct of those who seemed to control the whole matter. The census was taken but in twelve of the thirty-four counties, leaving twenty-two in which no census was taken. In the twelve counties were the census was taken there were found to be 25,321 inhabitants. In the same counties there were found and registered 7,854 voters. This would give us the ratio of voters to the whole population as *one* to *three and twenty-two hundredths*. Looking now to the returns of the October election for delegate to Congress, we find there were polled in the counties not registered 1,693 votes, which, on the ratio above ascertained, would give for their population 5,451 inhabitants, the vote and the population being about one-seventh of that of the entire Territory, while eight of the thirty-four counties returned no votes at the October election, and are left out of the estimate. This number of unregistered voters would have been entitled to at least nine delegates in the convention. The total vote of the Territory for Congress in October last was 11,687, and the total vote for governor in January last was 13,420, from which at least 3,000 illegal votes should be deducted; but, considering the entire vote as legal, we shall then have, upon the ratio above ascertained, taking the October election as the basis, 37,400, and taking the entire January vote as the basis, 42,945 as the whole population of the Territory. It would seem, after making every allowance, that 45,000 is as large a number as can possibly be claimed by any one upon any basis of estimate.

With these facts before us, it is unaccountable that the committee should refuse to consider the subject of population. They say that it is one of the usual subjects of inquiry. Why, then, not consider it now? Are all the usual rules, practices, and requirements of the country connected with the admission of new States to be ignored in the case of Kansas? The undersigned think it a very material fact connected with the propriety of the admission of this State under the Lecompton constitution. Are we to commence admitting States with not half population enough to entitle them to a representative in this House, except as a matter of grace? And is Kansas, for her alleged rebellion, to be made the first recipient of your generosity? Let this example be once set, and Nebraska and Washington may come next year with one-half the population of Kansas. If we are to sink below

the federal ratio it will be impossible to fix another line. The committee say "the sufficiency of the population of Kansas seems to be conceded on all sides." This, it is true, is a shorter method of disposing of this important inquiry than by an examination of the facts; but it has never been so conceded by us. We hold it next to indispensable that a Territory applying for admission into the Union shall have a population equal to that fixed by law as the ratio of representation in the House of Representatives. Kansas certainly has not one-half that number, and for this reason alone ought not to be admitted into the Union, to hold in the Senate a power equal to that of the States of New York and Virginia; and to have an equal voice with either of them in the election of President of the United States, if an election by the House of Representatives should be made. Nothing but the most extraordinary circumstances could induce us to consent to such an act.

But, returning to this so called "registration of votes," it will be seen that Doniphan county is returned with nearly as many votes as Douglas, when it had, notoriously, but about one-half as many—Lawrence, the largest town in the Territory next to Leavenworth, being in Douglas county. Johnson county is returned with 496 votes; yet, when the census was taken and when the vote was cast, no white man could have a legal residence in that county. It was the Shawnee reserve, and excluded from settlement by law. Yet it sent three members to the convention, all non-submissionists.

The majority report states that Shawnee, Richardson, and Davis had 283 votes. This is not so stated in the governor's proclamation. No census was taken in either of these counties except Shawnee, and not one-third of the votes were taken in that county. Richardson and Davis are well settled counties, lying on the Kansas river, and either of them having as many votes as were returned from Shawnee. So notoriously unjust was the return for Shawnee, that Judge Elmore, who was a delegate from that county in the convention, claimed that four members were entitled to seats from it, and that number was, in fact, elected, but two only were allowed their seats.

Bourbon, McGhee, Dorn, and Allen are returned with 645 votes, yet no census was taken except in Bourbon, and much of that was fraudulent. No census was taken in either of the other counties, though all have some population, and McGhee returned at the October election some 1,100 votes! These facts are furnished by intelligent and reliable gentlemen who have lived in Kansas for more than three years, and they could have been fully proved had the minority been allowed to call witnesses. Now, with these returns, some counties omitted entirely, others in part, others again fraudulently returned beyond their true population, it cannot be justly said the delegates elected were the delegates of "the people of Kansas," and that the constitution which they formed was the constitution of the people of Kansas. We have already shown that the unjust laws of the Territory disabled, as they were intended to do, a large portion of the citizens of the Territory from voting on the question of holding a convention, and in the election of the legislature, which passed the act

providing for the election of delegates, so that neither of their acts were the acts of the people of Kansas, but of a part of the people only.

But it is said by the majority in explanation of the non-registration of voters in the disfranchised counties—which we have shown would have been entitled to nine members of the convention, representing near 6,000 inhabitants, and which would have changed the whole character of the convention—that they "prevented the registry themselves," and that it was the result of their own wrong. What is the proof of this assertion? All the officers of the Territory were of the party who held the legislature and derived their offices from it, and were to hold them for six years. This was one of the means taken by that body to perpetuate the power of their party, and done in violation of the spirit of the territorial act. Upon them rested the duty of making this registration and census. Why did they not do it? It is said that the free-State men would not let them do it, that they made threats against those who should attempt to make this registration, and we have seen the *ex parte* statements of one George Wilson, who volunteered as a witness, and says "that the life of any one attempting to execute the law in that particular was in danger, and the foregoing threats were the cause that prevented the taking of the census in Anderson county within the prescribed time." He also swears:

"In regard to PassmoreWilliams, judge of probate for Allen county, members of the so called free-State party stated to me, in person, that if he attempted to execute the law and did not leave they would kill him; and I know the fact that he did not so execute the law, and left the county, because he believed his life in danger. Mr. Williams is from Illinois, and is a free-State man, but belongs to the Democratic party.

"In regard to Esquire Yocum, judge of probate for Franklin county, he left the county and the Territory on account of losing his negro property and having his life menaced. The office being vacant, the legislature which passed the census law appointed a new judge of probate and other officers, who refused to serve, alleging as a reason that they were afraid so doing would cost them their lives. Consequently no census was taken, and no legal election held."

Are these rambling assertions sufficient to justify shutting near six thousand people in the unregistered counties out of the convention? Is a public officer to abandon his post and cease effort to discharge his duty because some scoundrel utters a threat against him? Why does he not give the names of those who threatened this violence? Who made the threats? Who was bent on violence? When and where was it done? Why were they not reported to the governor, who with his *posse comitatus* of dragoons was ready to enforce the law and bring the offenders to justice? Let us have specifications and facts in the shape of testimony before we thus excuse public officers from the discharge of their duty, and condemn *whole counties* to suffer from these charges, and to be shut out of the convention and be deprived of all opportunity of participating in forming their constitution. This hearsay talk about Passmore Williams and Esquire Yocum is not evidence of any kind. It is doubtless all that could be procured,

and we are left fully impressed with the fact that these counties were disfranchised by the same power and interest that disfranchised so many voters under the act of 1855, and that it was done for the same reason. The bulk of the free-State men were not registered, not because of their own wrong, but because of the intention of the party in power that they should not vote, exclusion from the registry being in effect exclusion from the polls. These facts the minority of the committee were ready to sustain by competent proof had the majority allowed them to do it.

The seventh section of the law providing for the election of delegates to the convention declares:

"It shall be the duty of the governor and secretary of the Territory, *so soon as the census shall be completed and returns made*, to proceed to make an apportionment of the members for the convention among the different counties and election districts in said Territory, in the following manner: the whole number of legal voters shall be divided by sixty, &c.: *Provided*, That the loss in the number of members, caused by the fraction remaining in the several counties in the division of the legal voters thereof, shall be compensated by assigning so many counties or districts as have the largest fraction an additional member for its fraction, as may be necessary to make the whole number of representatives sixty."

The plain intent of this law is, that the apportionment of delegates to the convention was not to be made *until the census should be completed and the returns of such complete census made.* The census never was completed; nor were returns of a complete census ever made, and the apportionment was therefore illegal. Mr. Stanton, the then acting governor, has since publicly declared as much in his speech, lately made in the city of New York. He said:

"I could not know what was the population of these interior and distant counties. I was not even informed correctly whether there was any considerable population in them which might claim a representation in the convention. I waited with great anxiety when the returns began to come to me, as secretary and acting governor, for the returns from the nineteen counties that had been wholly neglected. I had not been informed whether in those counties the officers had taken the census or not, except perhaps in relation to one or two of them, and I had no power to force the officers to do their duty; I had no power to appoint officers where there were any to perform those duties; *and the people in those counties, whatever might have been their disposition, were absolutely deprived of the opportunity of representation in that convention.* Now, I have been denounced, especially by some of the papers in the Territory, and perhaps out of it, for having made the apportionment when I did. I have said, and I repeat it again, *that if I had then known what I have since ascertained, and what I now believe and know to be true, I should have hesitated before I should have made an apportionment which should have brought about the state of things that now exists. I should have suffered the whole law to fail.* I would have had no convention representing one-half of the Territory, although, gentlemen, that half undoubtedly represented much the larger portion of the population; but I would have had no such con-

vention ; I would have been the instrument in bringing about no such meeting, if I had supposed or dreamed for a single moment that they could have attempted to carry out the plan which they subsequently adopted, and are now endeavoring to force upon that people.

"But, under the circumstances, without information, *supposing, as I did then, that the people who had refused to go into this election, or to go into the process of registration, were in some measure factious, and not justified in what they were doing, and not knowing the character of the population in the other counties, or whether they had any population at all, or any considerable population, and being under the necessity of acting by a particular time*, (for the returns were to be made on the 1st of May, in my office, and the election was to take place on the 15th of June,) I say, under the pressure of these circumstances, *I could do nothing but what I did.* I waited until the very last moment, (somewhere about the 21st of May,) before I made the apportionment, in order to give notice that might go to the distant parts of the Territory, for a part of the law required ten days' notice before the election could take place ; and I waited with the expectation that Governor Walker would come, so that I could have the benefit of his advice ; for if he were there, it would have been his duty, and not mine, to make the apportionment. *The most important facts which bear upon the case have come to my knowledge since the act by which I apportioned the Territory for the election of the sixty delegates who composed the constitutional convention.*"

This shows that the apportionment by the acting governor was made under a misapprehension of the facts, and had he known at the time he made it the real state of affairs, it would not have been done, and from the letter as well as spirit of the law it ought never to have been done. If an apportionment could have been made with part of the counties left out, they could all have been left out but such ones as the officers saw fit to return ; and thus nine-tenths of the people might have been excluded from representation in the convention. Indeed, if but a single county had been returned, and all the delegates apportioned to that county, the apportionment would have been as regular and as legal, and the election of delegates and all the subsequent proceedings would have been as regular and legal as they now are, and we could with the same reason and same propriety have been met by the President and the majority of the committee with the cool declaration that "it is impossible that any people could have proceeded with more regularity in the formation of a constitution than the people of Kansas have done."

But the election of delegates came off. The votes were cast mainly upon one side, for the reasons already stated. At the time of the election many of the candidates were pledged to provide for a submission of the constitution to the people for ratification or rejection, and were elected upon such pledges. A large portion of the pro-slavery men of the Territory desired this submission, knowing well what would be the state of feeling among the people of the Territory if this should not be done. The convention assembled on the 7th day of September, and was found to have several of its members citizens of Missouri, enough, indeed, to change the result of its action on the

slavery question. This, though a plain violation of law, seems to have passed along without objection. It was found that the submissionists and the non-submissionists were nearly equal, and as a matter of prudence they adjourned to meet again on the third Monday of October. What was the cause or design of this adjournment can be very well understood, and could have been as clearly proved had opportunity been afforded. The October election for the territorial legislature was at hand, and as Gov. Walker and Secretary Stanton had been using their best efforts to quiet the Territory and bring the whole people to the polls, the majority of the convention thought it unsafe to let their real purposes be known prior to that election, fearing that the consequences might prove disastrous to their party, notwithstanding the extraordinary steps they had taken to maintain its ascendancy. Yet, if the October election should result against them, it would be necessary to take still further action to prevent their grasp being loosened. Before the convention adjourned, however, they had taken action upon the claim of the delegates elected from the counties of Anderson and Franklin. Secretary Stanton had given certificates of election to R. Gilpatrick and J. Y. Campbell as delegates elect from the county of Anderson, but stating that the census returns of that county were informal. He also gave a certificate of election to Wm. R. Judson as delegate elect from the county of Franklin. The elections in these counties were held on the day required by law, but neither of them were included in the apportionment of delegates. Judge Elmore introduced the certificates of election of Messrs. Gilpatrick and Campbell, and on his motion they were referred to a select committee of five. Mr. Wells introduced the certificate of Mr. Judson, and, on motion of Mr. Easton, it was referred to the committee on elections. On the 10th of September Judge Elmore, as chairman of the select committee in the Anderson county election case, submitted a report in favor of Messrs. Gilpatrick's and Campbell's claim to seats in the convention, but the convention put off the consideration of the subject until they should reassemble after their adjournment over. It was apparent that they would be excluded by the convention, and to prevent any further annoyance to themselves and indignities from the body that had predetermined to reject them, they withdrew their certificates, as is understood, on the advice of Judge Elmore. It is not correct, as has been stated, that they voluntarily withdrew from this convention. Mr. Judson was also excluded; and having now the organization to their own liking, they adjourned, as we have already stated, to the third Monday of October.

The October election for members of the legislature came off. The efforts of Governor Walker and Secretary Stanton, backed up as they were by the approbation of the President, and by his pledges and assurances, both personal and official, that he would sustain his territorial officers in their efforts to have the elections fairly conducted for territorial officers, and that the submission of the constitution to the people should be full and complete, were partially successful. Confidence in the executive branch of the government began to take the place of distrust and alienation. A large portion of those who had, since the first election, abstained from the polls from the causes

already stated, believing that a better future was before them, went to the ballot-box and there fairly carried both branches of the legislature, notwithstanding the most unheard of frauds were, as usual, in many places resorted to to prevent it.

This election was the commencement of a new era in Kansas; it worked an entire revolution in the whole policy of legislation. From being decidedly pro-slavery in all its movements and objects, it became opposed to that institution; and the party whose voice had not been heard since the first contest in March, 1855, now fully in the ascendant, assumed to control all the civil affairs in the Territory. It was now evident that the popular sentiment was not only in favor of excluding slavery from Kansas, but that nothing but the most daring and unscrupulous conduct by the convention could prevent that result from accomplishment within a brief period. Public meetings were called in the south, at which the conduct of Governor Walker and the President were denounced as being at war with the rights and interests of the slaveholding States, and the President was called upon to remove the governor and secretary from office. The position was also taken by prominent public men, and by conventions and assemblies in the south, that the constitution then being framed at Lecompton ought not to be submitted to the people, but sent directly to Congress. Letters, resolutions, and addresses from all these sources were poured upon the delegates, to affect as far as possible their action. With this change of affairs in the Territory, and this position of sentiment proclaimed in the south, the policy of the President underwent a like change. The official organ of the administration, as late as July, declared that there was no way of ascertaining the will of the people—

"Except by their own direct expression at the polls. *A constitution* not subjected to that test, no matter what it contains, will never be acknowledged by its opponents as containing any thing but fraud. A plausible color might be given to this assertion by the argument that members of the convention could have no motive for refusing to submit their work to their constituents, except a consciousness that the majority would condemn it. We confess that we should find some difficulty in answering this. What other motive could they have?

"We do most devoutly believe that unless the constitution of Kansas be submitted to the direct vote of the people, the unhappy controversy which has heretofore raged in that Territory will be prolonged for an indefinite time to come. We are equally well convinced that the will of the majority, whether it be for or against slavery, will finally triumph, though it may be after years of strife, disastrous to the best interests of the country, and dangerous, it may be, to the peace and safety of the whole Union.

"Again: This movement of the territorial authorities to form a constitution is made, not in the regular way, in pursuance of an enabling and authorizing act of Congress, but in the mere motion of the territorial legislature itself. Nay, it has been begun and carried on in the teeth of a refusal by Congress to pass such an act. This irregularity is not fatal. There are other cases in which it was overlooked. But it can be waived only in consideration of the fact that the people have expressed their will in unmistakable language. If we dispense with the legal forms of proceedings, we must have the substance.

"We think, for these reasons, that Governor Walker, in advocating a submission of the constitution to a vote of the people, acted with wisdom and justice, and followed the only line of policy which promises to settle this vexed question either rightly or satisfactorily. In this respect, at least, he has done nothing worthy of death or bonds."

This official journal, that had in July used the language already quoted, faced about, and began to denounce every one who held like opinions as apostates, renegades, demagogues, traitors, black republicans, &c. An individual holding an office in one of the departments of the government, and drawing his pay from the federal treasury, was despatched as an emissary to Lecompton, and proceeded there to instruct the people of Kansas, through the delegates in the convention, how to manage their domestic institutions *in their own way*. This was done, and the constitution engineered through the convention in such a form that, while it pretended to submit the slavery clause to the people, it in reality did no such thing. In a letter published in the Jackson Mississipian of November 27, and written from Lecompton on the 7th of November, (the day of the adjournment of the convention,) and written, as the undersigned have strong reason to believe, (and think they could have proved had the majority of the committee allowed them,) by the emissary already alluded to, or at his connivance, these views of the committee are fully sustained. After giving a history of the action of the convention upon the mode of submission of the slavery clause, and showing an amount of legislative jugglery unmatched in history, he says:

"Thus you see that whilst, by submitting the question *in this form*, they are bound to have a ratification of the one or the other, and that while *it seems to be* an election between a free State and pro-slavery constitution, it is, *in fact*, but a question of the *future introduction of slavery* that is in controversy, and yet it furnishes our friends in Congress a basis on which to rest their vindication of the admission of Kansas as a State under it into the Union, while they would not have it sent directly from the convention.

"*It is the very best proposition for making Kansas a slave State that was submitted for the consideration of the convention.* In addition to what I have stated, it embraces a provision continuing in force all existing laws of the Territory until repealed by the legislature of the State to be elected under the provisions of this constitution."

The Lecompton National Democrat of November 19, published on the spot, says:

"THE CONSTITUTION.

"We publish this instrument to-day in full. It occupies almost the whole of our available space, and precludes the possibility of any extended remarks.

"Our opinion of the final action of the convention, as briefly given in our last issue, has not been changed by such an examination of the constitution as we have been able to give it. We still think that the whole subject should have been submitted to the people. But, at all events, the slavery question should have been fully and fairly put to the people for their decision. This, as we understand it, has not

been done. *No matter how the people may vote, if this constitution should prevail, Kansas will be a slave State.* We would not object to this result if the people should so will it; but we think they should have a full opportunity to determine the character of the institutions of the new State."

The Charleston Mercury, shortly after the opening of the present session of Congress, said:

"We lay before our readers this morning the message of the President of the United States. It is, as was to be expected, an able document, sound in almost all of its positions, and worthy of the Chief Magistrate of our great confederated republic. The main point of difficulty and delicacy is in the affairs of Kansas. He thinks that the convention of Kansas, in submitting only the clause in the constitution relating to slavery, has fulfilled what he supposes to be the requisition of the Kansas-Nebraska act. We are equally satisfied with the action of the convention. We differ, too, with the President as to what is submitted to the vote of the people. *We do not think that the question of slavery or no slavery is submitted to the vote of the people. Whether the clause in the constitution is voted out or voted in, slavery exists, and has a guaranty in the constitution that it shall not be interfered with; whilst, if the slavery party in Kansas can keep or get the majority of the legislature, they may open wide the door for the immigration of slaves.* But this also is a small matter of difference with the President. It is enough for us that he goes with the South in the policy of admitting Kansas into the Union with the constitution she shall present, whether with or without the slavery clause. We heartily support his policy, although we may not agree in all his reasoning. And, above all, we rejoice for the sake of our old partiality, and our advocacy of him before he reached the illustrious dignity of the presidency, that he has not soiled his fame by identifying it with Walker."

These extracts go to show that the view taken by the President and the majority of the committee that the slavery question had been *fairly submitted* to the people of Kansas is incorrect. Not only was every man who did not favor the constitution itself excluded from the polls, but even those who went and voted were lending themselves as instruments to a fraud. It was like submitting to the ancient test of witchcraft, where, if the accused upon being thrown into deep water floated, he was abjudged guilty, taken out and hanged; but if he sunk and was *drowned*, he was adjudged not guilty—the choice between the verdicts being quite immaterial.

The journal of the convention, except that portion covering the last three or four days of the session, was from some source placed in the hands of the majority. The most interesting portion embracing the closing acts of the convention are missing, and will probably remain so until this question is disposed of. Those missing sheets would give us the votes upon the various questions and propositions for submission, showing the object in adopting the mode finally agreed upon. They would show that non-submission was caused by a minority of the convention. They would show that, but for the fraudulent getting up of the convention, the work would have been of a very different character. They would enable us to see who violated

pledges, who trampled down parliamentary law and the rules and orders of the convention itself, to accomplish this tricky form of submission, and to consummate a scheme of villany fully intensified.

The minority desired to procure these missing sheets, but they were not permitted to do so, although it is believed they are in the city, but suppressed for important but discreditable reasons. The debates of the convention, taken by its order, formally made and entered upon the journals, were also within reach of the committee, and could have been procured had the committee been willing to have had them made public. They were as much the property of the committee as the journal itself, and as giving the only clear view of the inside workings of the convention were considered by the undersigned as of the highest value; but they also were suppressed by the persons having them in custody, and the undersigned can hardly blame those in charge of them for doing so, and thus keeping from the public eye a mass of harangues both atrocious and treasonable.

The undersigned, however, desired the whole truth presented to the House, and labored, but unsuccessfully, to that end. The constitution was not submitted to the people, because it was well known that it would be rejected by an immense majority. Yet it seems to be considered by the president and the majority of the committee that the best mode of allowing the people to regulate their affairs in their own way is not to let them have any way or voice at all in the business, but to make them subject to the dictation of the Lecompton convention. It is true that the great national convention that met at Cincinnati and made a declaration of principles for the party which elected Mr. Buchanan—

"*Resolved*, That we recognise the right of the people of all the Territories, including Kansas and Nebraska, acting through the LEGALLY and FAIRLY expressed WILL of a MAJORITY of ACTUAL RESIDENTS, and whenever the NUMBER OF THEIR INHABITANTS JUSTIFIES IT, to form a constitution with or without domestic slavery, and be admitted into the Union upon terms of perfect equality with the other States."

Yet, in Kansas, there was no action by "the people" in forming this constitution, nor has there been any legally and fairly *expressed will of a majority of the people* upon this instrument or any of its provisions. The president of the convention, in his letter to the President, says that the question whether this constitution should contain a clause making Kansas a slave State or not was submitted to a vote of the people of the Territory on the 21st day of December, 1857, and resulted as follows:

"For the constitution with slavery.....	6,226
"For the constitution without slavery.....	569
"Total vote for the constitution.....	6,795

"The votes for the two sides of the constitution is a majority over any vote previously given at any election holden in the Territory."

Thus the president of the convention seems to feel the force of the resolution of the democratic party that there should be legally and

fairly expressed "the will of the majority of the actual residents;" and he, to meet this, declared that "the votes of the two sides of the constitution is a majority over any vote previously given at any election holden in the Territory;" thus leaving the impression that there had been expressed, *legally* and *fairly*, the will of the majority of the actual residents. True, he does not say "so many legal votes were cast," or that "so many votes were cast," but he says "the votes for the two sides," &c., thus including the manufactured, the spurious, the fraudulent, and all, nearly one-half of which have turned out to be of some one of these descriptions. The undersigned think it a safe doctrine to require that, upon all great and important changes in systems of government, there should be, when a direct submission of a question is made, a majority not simply of the *votes cast*, but a majority of the whole number. No such majority was had for this constitution of Kansas, although it is quite apparent Mr. Calhoun desires we should think so. By the testimony taken before the commissioners of Kansas, and hereto appended, it is clear that of the 6,226 pro-slavery votes cast on the 21st of December, there were 2,720 of them fraudulent, at the four precincts of Kickapoo, Delaware City, Oxford, and Shawnee. How many of like character were cast at the other precincts has not transpired. But admitting all the rest to be correct, it leaves only 3,506 legal votes cast "for the constitution with slavery," and deducting this number from the number cast on the 4th of January, as certified by Governor Denver, of 10,226 "against the constitution framed at Lecompton," it leaves a majority of 6,720, or about three to one, against that instrument in its present form. The undersigned are informed by gentlemen from Kansas that there were more than 1,000 votes cast against the Lecompton constitution on the 4th of January which were not included in the 10,226, not having been returned when the count was made; but the majority of 6,720 is sufficient for our purpose.

The total vote in October was 11,687, and the total vote for governor on the 4th of January was 13,420, from which last there should be deducted at least 2,500 illegal votes returned for the pro-slavery ticket, leaving about 10,400 as the number of votes cast on that question. And it is well known that a large number of the free State men (including Lane and his partisans) refused to vote for governor. From all the data within reach of the undersigned it would seem that the legal voters of Kansas number about 13,000; and that nearly all the legal votes in the Territory were cast on the elections of the 21st of December and 4th of January for and against the constitution, and rejecting it by an unexampled majority of four to one. But it is said that this vote of the 4th of January is irregular and must not be considered. We have already shown that, if regularity is to be strictly required, the Lecompton constitution will not stand the test; that its whole history is marked by irregularities and outrages from beginning to end. But this vote of the 4th of January was a legal and valid one. It was taken under a law of the territorial legislature, which represented the whole body of the people. The law was approved by the governor of the Territory, who, in his person, represented the government of the United States. The Secretary of State, with the full

knowledge of the purposes for which Mr. Stanton had convened the territorial legislature, instructed General Denver as follows:

"The territorial legislature doubtless convened on the 7th instant, and while it remains in session its members are entitled to be secure and free in their deliberations. Its rightful action must also be respected. Should it authorize an election by the people for any purpose, this election should be held without interruption, no less than those authorized by the convention."

Gen. Cass here directed that the rightful action of the legislature, in ordering an election upon the constitution, should be held "as free from interruption as that authorized by the convention." But, whether recognized by the president and a majority of the committee or not, the vote of the 4th of January was a fair, just vote, as expressive of the will of the people of Kansas against the deceptive constitution. It was held under authority of law, and under all the solemn sanctions of official oaths and obligations; and it is amazing that any one can be willing to exclude such conclusive evidence of the popular will, and either deny its existence or treat it with contempt and disdain. This, in effect, is the action of the majority of the committee, who cannot go the length of excluding these great facts, but yet consider them neither "relevant nor material." The majority of the committee think this vote comes *too late*, even if from orderly citizens. It was the first opportunity these orderly citizens ever had to condemn the work of the Lecompton convention; and the President removed Gov. Stanton from office because he called the legislature together to enable them to speak at all. It seems to have been his will that the people should have *no voice in the matter* The only difference is, that the majority of the committee thinks the vote come *too late*, while the President thinks it ought not to come *at all.* The election was only two weeks after the one ordered by the convention, and it was upon a different form of submission, which the legislature had a right to propose. You have not admitted Kansas yet; you are under no moral or political obligation to do so. Twenty-five hundred persons, citizens of Kansas, have asked you to do it; ten thousand petition and *ask you not to do it.* The majority of the committee say that twenty-five hundred shall be obeyed, and the ten thousand are slapped in the face and told to "begone; that Congress recognizes the doctrine of popular sovereignity, and therefore the minority must rule." The argument is even made in some quarters that minorities ought to make constitutions and ought to rule. So thinks the despot who wants but one to compose that minority, carrying out the theory that the smaller the minority the more perfect the rule. It is true that the convention attempted to destroy the territorial legislative power; but we are entirely clear that in this attempt their wickedness of design exceeded their ability for its successful perpetration, and that territorial authorities, in all their branches, have yet full power to act until Congress shall admit the State into the Union.

The committee devote about one-half of their entire report to a review of the opinions of Governor Walker, Secretary Stanton, and Mr. Douglas. What those opinions have to do with the inquiries and investigations ordered by the House, it is difficult for the undersigned

to see. Suppose every opinion those gentlemen ever advanced to be wrong, it still does not prove that the Lecompton constitution embodies the will of the people of Kansas, and ought therefore to be sustained by Congress. The committee, in their argument against the submission of the constitution to the people, say:

"The formation of a constitution requires, it is true, the exercise of sovereign power, and so does the commonest act of legislation If the power to do one can be exercised by an agent or representative, so can the other; and such has been the uniform understanding in this country from the beginning of our history. The Constitution of the United States was not ratified by a popular vote. In all the States it was adopted by conventions chosen by the people, and clothed with full powers to act for them."

Against this attempt to drag constitutions down to the level of every-day common-place legislation we protest. It is true the original powers of each are in the people. But legislators, in the exercise of their powers, have to submit their action to the scrutiny of the people's executive, to proceed in subordination to constitutions, and their enactments are within the reach of the courts for annulment if found to be in contravention of the organic law. The delegates in conventions are subject to no restraints by executive power, by judicial tribunals, or by constitutions. They themselves are the architects of all these. There is but one authority to which they must submit their work; that is the authority of the people. If *they* approve, well; if not, the work is void. As these conventions prepare the highest of laws, their force must be contingent upon the approval of the highest authority—that of the people. We deny that the people can delegate sovereign power to agents. If so, they cease to be sovereign when their sovereignty is so delegated, and they might transfer their own rights to liberty and life—a theory in direct hostility to republican or democratic government. The people can concede nothing by implication, and, unless a convention be specifically authorized to frame and set in motion a government, they should report their work to the people for approval. It is true the people, by acquiescence, may express their approbation of the work of their agents, and by consent waive the failure to submit. But the doctrine that a convention elected by the people can frame such government as they please, and put it in operation against the will of nine-tenths of the people, and that the Congress of the United States will sustain such government, and that upon a technicality, is both monstrous and revolting.

It is said by the committee the Constitution of the United States was not ratified by a popular vote; and this seems to be put forward as an argument why the constitution of Kansas should not be so ratified. But the Constitution of the United States was framed by a convention, and the whole work submitted to conventions in the States, and the people, in electing delegates to such conventions, did so with direct reference to their voting for or against the instrument. In fact, the people voted upon its rejection or adoption through their conventions. Will the friends of the admission of Kansas under this Lecompton instrument concede the same privilege to the people of Kansas, to wit: the election of a new convention to pass upon that

constitution? If they will, the whole difficulty can be settled in an hour; if not, let them cease to quote the adoption of the Constitution of the United States as a precedent.

A parallel is attempted to be drawn between the admission of California and that of Kansas. The committee say:

"How any person could maintain the legality of the proceedings in the California case, and deny them in Kansas, or hold that an enabling act by Congress was necessary in the Kansas case, when it was not necessary in California, is incomprehensible to this committee. They dismiss the point without further remark."

We have already shown that, in the admission of new States, whatever Congress legalizes becomes legal. No adherence to forms renders it obligatory on Congress to *admit*—no departure from them requires Congress to *reject*. Each case must stand upon its own merits, although we think the better course is to follow the usages and precedents set by the early fathers. But look at the California case. Their constitution was *adopted* by over eleven thousand majority upon a popular vote. Not one voice came from California objecting to her admission. The Kansas constitution was *rejected* by almost as great a majority, and the masses of her people are praying and protesting against her admission under it. To those of us who profess to have some regard for the popular will the difference in these cases is quite comprehensible. We "dismiss the point without further remark."

But the majority say that the five counties of Leavenworth, Atchison, Douglas, Doniphan, and Jefferson, had a majority of the whole vote of the Territory, and thirty-six out of the sixty delegates to the convention. The committee go on to say:

"Now, if it be true that the opponents of the constitution are so largely in the majority in those counties, and are so violent in their opposition, as they are represented to be, why did they not elect men to the convention who would have formed a constitution more to their liking? These counties alone, by the registry, had within four votes of two-thirds of the convention, and could have made just such a constitution as would have been most agreeable to their people. If they refused to act at the proper time why do they complain now? If others, conforming to the law, went into the convention and formed a constitution to suit themselves, was it not their fair, just, and legal right to do it? Those complaints come too late, even if they come from orderly, law-abiding citizens. As well might the thousands who abstained from the polls, or threw away their votes, at the last Presidential election, now come forward and claim that the present administration is illegal, and should be set aside, because the inaugurated Chief Magistrate did not receive a majority of all the legal voters of the United States, as for these people now to complain of the result of their own *laches* or illegal acts, or to seek to remedy it by any such irregular proceeding as the vote taken on the 4th of January against the constitution after it had been legally adopted?

Whether a majority of the people of these counties were, at the time of the election of delegates, opposed to a constitution or not, it is impossible to ascertain, and what the public sentiment might have been had

the convention done its work like an honest assembly is equally impossible to know. But it is not strange that the people of Leavenworth and Douglas and Shawnee should be violently opposed to the work of delegates, a large portion of whom had falsified pledges and attempted to cheat the people out of their dearest and inalienable rights. It is quite useless for the President or the majority of the committee to set up a standard of action for the people of Kansas which their own convention have rejected. In the 14th section of the schedule it is provided that before a change can be made in the constitution, "*two-thirds of the members of each House concurring*, they shall recommend a vote of the people for a convention, and if it shall appear that a MAJORITY OF ALL CITIZENS of the State have voted for a convention, then the legislature shall provide by law for an election." The convention of Kansas, which the committee say was the people of Kansas, did not think it the proper mode of changing or making organic law to have it done by the few who might go and vote. The people of Kansas think there should be expressed *affirmatively* a wish for a change by a *majority of all the citizens of the Territory*, and this to be preceded by a like wish from *two-thirds of both branches of the legislature*. Now, by what reason the President and the committee undertake to say that the few hundred who go to the polls shall rule in a matter of fundamental law the many thousands who do not go to the polls when the convention, whose action they laud so highly, and which they say spoke for the people of Kansas, adopted a different and opposite rule, can only be explained from the fact that a bad cause requires ingenious defences; and there is no more analogy between the position of those who might have voted at the Presidential election and did not vote, and those who complain of wrongs perpetrated under the oppressive laws of Kansas, and in and by this convention, (all of which were beyond the reach of the people,) than there is between the President with his breakfast before him refusing to eat and Tantalus, perishing with hunger, unable to reach the fruits hanging upon the boughs around him, but which withdraw from his reach at every attempt to pluck them.

The majority of the committee hold that there is no mode of ascertaining whether the Lecompton constitution is acceptable and satisfactory to a majority of the legal voters of Kansas:

"Without polling every legal voter in the Territory, and if they had gone there and taken the vote themselves for and against the constitution, perhaps the majority might have varied from one side to the other by death, emigration, or change of opinion, before their report could have been made. That course of investigation is wholly impracticable. The only proper mode of pursuing the legitimate inquiry before Congress, in the judgment of the committee, is to ascertain whether the constitution embodied the legally and fairly-expressed will of those who by their acts acknowledge themselves to be *bona fide* citizens and constituent elements of the society or political community to be organized in a State within its jurisdiction. Those who by their acts show themselves not to be *bona fide* citizens but *mala fide* residents, and even self-acknowledged outlaws by their open hostility to all civil authority, should not be considered or taken in the count. The convention that formed the constitution was as fairly constituted

as could be with the view of allowing every *bona fide* citizen in Kansas entitled to vote to have a free opportunity to be heard in its formation. This Mr. Stanton said; this Governor Walker said; this Judge Douglas said; this, also, abundantly appears from the facts and evidence now submitted. The only correct test of the will of a majority of the *bona fide* voters of Kansas upon the subject of their constitution is that of the ballot-box, and such an expression of their will as has been there given at the proper time and place, in conformity to law. By this test a majority of them is certainly in favor of it. The majority of those going to the polls when the election of delegates, with full and plenary power took place, was largely in favor of those who made the constitution; and when the direct question on the slavery clause was submitted on the 21st December the like majority was overwhelmingly in favor of it. On the 4th of January, in the election of State officers under the constitution, it is well known that both parties joined in a vigorous contest for the organization of the State under it. Upwards of 12,000 voters participated in that election. That vote shows most clearly that the constitution is not only *acceptable*, but has been *accepted* by at least four-fifths of the voters of the territory, though it may not be entirely *satisfactory* to all of them."

Without analyzing at length this elaboration of subtilties, it is sufficient to say that the committee were not asked for their opinion whether emigration or death would have varied public opinion in Kansas before a report of the fact could be made; but they were directed to inquire whether, at the time of the adoption of the resolution under which they act, the constitution framed at Lecompton was "acceptable and satisfactory to a *majority of the legal voters of Kansas.*" This they have not done. But, in order to arrive at their conclusions, they say:

"Those who by their acts show themselves not to be *bona fide* citizens but *mala fide* residents, and even self-acknowledged outlaws by their open hostility to all civil authority, should not be considered or taken into the count. * * * The only correct test of the will of the majority of the *bona fide* voters of Kansas upon the subject of their constitution is that of the ballot-box, and such an expression of their will as has been there given at the proper time and place, in conformity to law. By this test a majority of them is certainly in favor of it."

Here it seems the committee first decided that all who did not vote at the election in October, 1856, for or against a convention, and all who did not vote at the June election, 1857, (whether registered or not,) for delegates to the convention, and all who did not vote "for the constitution" in December, 1857, are "*mala fide*" residents" or "self-acknowledged outlaws." After this assumption, as gratuitous and untenable in itself as it is uncharitable and unjust to the people of Kansas, we are prepared for any thing that may follow. But, admitting the "test," it is still untrue that a majority of the people of Kansas are in favor of the Lecompton constitution. The committee, in their report, state that 6,795 votes were cast "for the constitution" at the December election. There is no evidence of this vote but the general statement of Calhoun, a statement in itself entitled to no con-

sideration. It could have been proved before the committee, had the majority allowed it, that of this 6,795 votes nearly one-half were fraudulent and illegal. And it has been fully established by testimony taken by a commission acting under a law of the Territory that, in four precincts alone out of about one hundred and twenty in the Territory, near 3,000 illegal votes were cast on the 21st of December "for the constitution." This cuts down at a single slice the pro-constitution vote to nearly one fourth of the vote claimed by the committee in the entire Territory. If one-fourth of the votes constitute a *majority*, the undersigned have been greatly in error in their understanding of the term.

But the committee go further, and say that, at the 4th of January election for State officers, "upwards of twelve thousand voters participated;" and they add, "that vote shows most clearly that the constitution is not only *acceptable*, but *has been accepted* by at least four-fifths of the voters of the Territory." If the committee were aware of the circumstances under which that vote was cast, it is surprising that they should claim the votes cast for the Smith ticket as favoring the constitution. If they were not aware of these circumstances, we will briefly state them. The whole vote alleged to have been cast at that election for the pro-slavery ticket was 6,545; of this number there have been found to have been cast in five precincts 2,458 illegal or fraudulent votes, leaving only 4,187 as the largest number rightfully to be claimed as having been cast for that ticket. Indeed, it is believed that investigation would reject from this number a very large portion as spurious and unlawful. On the other hand, there were cast for the free State ticket 6,875 votes, being a majority over the pro-slavery ticket of 2,688 votes. These votes for the free State ticket were cast, under protest, *against* the constitution. It is a notorious fact, which cannot be denied or evaded, standing out boldly before the public view—a fact that will be recorded unhesitatingly by every historian in after time—that those votes were cast by citizens of Kansas *protesting* that they should not be considered as a recognition of the constitution; and at the moment they were cast they placed also in the ballot-box another ticket, on which was written their sentiments "*against the Lecompton constitution*," and 10,226 voters of the Territory so declared their sentiments on that day at the polls. The whole free State ticket were understood to be publicly pledged against putting the Lecompton constitution into operation, and were voted for solely to defeat the operation of that instrument. These free State officers, thus elected under the constitution, if you please, have all joined in a petition to Congress to reject it. The people went to the polls and plead to the jurisdiction of your tribunal, and you, with star chamber justice and magnanimity, claim *that plea* as an acknowledgment of the very thing they denied. The people of Kansas have been unfortunate. If they decline to vote, you call them rebels and self acknowledged outlaws; if they vote, you overwhelm them with frauds, and say that voting is an acknowledgment that their protests against your outrages are untrue. You place them between the blades of your quibbling logic, and whether one falls or the other rises, their rights are cut off with the same cruel certainty. Not a vote has ever been taken in the Ter-

ritory of Kansas relating to this Lecompton constitution that has not demonstrated the fact that it is *both uuacceptable* and *unsatisfactory* to a majority of the legal voters of Kansas. And yet the committee weave a conclusion directly the reverse of the facts.

But the President advises us that it is "wise to reflect upon the benefits to Kansas and the whole country which would result from its immediate admission into the Union." The undersigned can see no such benefits, but consequences disastrous to Kansas and fraught with danger to the whole country. The idea of an irresponsible power coercing a people to submit to a government which they never formed, and which they despise and abhor, and this while they stand imploringly before you, beseeching you not to do it, is so repugnant to our every sense of justice, and so galling to that spirit of independence which marks the American character, that it can hardly be expected that the people of Kansas will quietly submit to it. It would be, indeed, a matter for themselves to determine; but, judging from the past, we think no other results could follow than to inflame an already excited public feeling to acts of resistance which could be justified by as high principles as ever governed men in resistance to tyranny and oppression. But were it even certain that the fond anticipations of the President could be realized by the admission of Kansas, it would not, still, justify the perpetration of so great a wrong. No temporary advantage can ever compensate for a departure from a just principle in government.

The President and the majority of the committee think that a large number of the States would keenly feel the rejection of Kansas, and would look upon her rejection with extreme sensitiveness and alarm. If so, we think it would be wholly without cause. But we think a still larger number would look upon her admission with equal sensitiveness and alarm. Not because her constitution recognizes slavery, for we undertake to say that, upon the application of a new State for admission into the Union, if a majority of its voters express their will legally and fairly in favor of that domestic institution, such fact is not, and will not be, with the people of the non-slaveholding States, a cause for rejection or objection; but the people of the whole country would feel, as they ought to feel, that, in this admission of Kansas, Congress would have endorsed and legitimated the most glaring irregularities, frauds, corruptions, and outrages, and would have finished their disreputable work with a violation if not a deadly blow at the first principles of civil liberty. The whole progress of this Kansas constitution, from the beginning, has been irregular, unjust, and corrupt. No State has ever presented herself for admission with a constitution constructed under such irregularities and through such violations of law. No precedent can be found for dragging a State into the Union against the will of three-fourths of her people. It is not *admitting* a sovereign State into the Union, but it is the coercion of a subject province.

The committee conclude their report as follows:

"The argument that Congress, by the admission, will be forcing any institution whatever upon an unwilling people is as gratuitous as it is groundless, even if a majority there be opposed to slavery. For,

by the Constitution of the United States, slavery is as much forced upon them as by the constitution of Kansas."

It is difficult to match the boldness of this first assertion. The people of Kansas have declared through every authoritative form that they are opposed to becoming a State under this constitution. Congress has alone the power to make them a State by admitting them into the Union. If that act shall be done by Congress, a constitution, with all the institutions which it provides and guarantees, will be forced upon an unwilling people, and whether the committee held such statement "gratuitous and groundless," or not, is a matter of very little consequence. The "argument" is nevertheless true. Whether "by the Constitution of the United States slavery is as much forced upon them as by the constitution of Kansas" is a matter into which the committee were not directed to inquire, and this opinion, uttered as it is in this connexion, is the merest *obiter dictum*.

The undersigned have had placed in their possession since the committee adjourned a full report of all the testimony taken before the Kansas territorial commission, duly certified and authenticated, which, with the report thereon by the commissioners before whom it was taken, is attached to this report. It is impossible to characterize the frauds of the elections of the 21st of December and the 4th of January as they deserve. We call to this evidence the attention of the House and the country, merely remarking that it is the settled conviction of the undersigned that these elections were not more unfairly and unjustly conducted than many which had preceded them.

They also append to this report a copy of the act of July, 1855; the act of February 19, 1857; the proclamation of Secretary Stanton of May 20, 1857; an extract from the executive minutes; also a copy of the Lecompton constitution, and the letter of Calhoun accompanying the same; also the vote of the people on the 4th of January (taken under the law of the territory) for and against the constitution.

They also present, as connected with the action of the committee, a record of its proceedings, and the views of the minority thereon.

In conclusion of this subject we will only add that, being fully convinced that this Lecompton constitution is neither acceptable nor satisfactory to any considerable number of the people of Kansas, much less to a majority of them; that it is not their act; that it neither speaks their sentiments nor embodies their will; that it is the offspring of fraud, corruption, and villainy; that the laws under which it was originated and the proceedings connected with its prosecution have been informal, irregular, and unjust; that the instrument bears upon its own face and in its own composition ample evidence of its base origin and deceitful pretensions, we think it would be highly improper to admit Kansas into the Union as a State under this constitution, and that such act would not only be unjust to the people of that Territory, but it would be dangerous to the peace and welfare of the whole country.

THOS. L. HARRIS,
GARNETT B. ADRAIN.