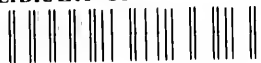


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SPEECH

OF

W. Graham
W. H. Hines
 HON. A. W. VENABLE, OF N. CAROLINA.

IN THE HOUSE OF REPRESENTATIVES, JUNE 1, 1848.

In Committee of the Whole, upon the power of Congress to legislate upon the subject of Slavery in the Territories.

Mr. VENABLE said :

Mr. CHAIRMAN : The extent to which Congress may exercise legislative authority over the Territories of the United States, has become a subject of most absorbing interest. It is felt to be so in every portion of our country—has been the source of deep feeling and agitating debate, and will continue to excite and disturb the repose of the country until definite action shall fix a conclusion for the popular mind. I am not one of those who believe that evil must grow out of full and fair discussion amongst statesmen, on great constitutional questions involving our rights; nor shall I be deterred from a thorough investigation, by a clamor about abstractions, often raised to prevent the analysis of the principles which are contained in an important line of policy. Every fundamental truth is an abstraction, and he only is a great statesman who can first analyze a question, and then, by his mental balance, weigh the result of the operation, and ascertain the proper force and value of the elements which compose it. Facts often mislead us, because we assign wrong causes for their existence; and when this is done, the most plausible array of facts, the most ingenious deductions therefrom, are delusive, for the same reason. Truth reduced to its elementary principles, affords the only safe guide to investigation, and the only satisfactory conclusions are those which are formed from such a development.

This subject, Mr. Chairman, has become one of great practical importance, and I avail myself of this occasion to present my views to the committee and the country—to assert the rights of my constituents and the State which I in part represent, to the common property of all the people of all the States. A convention recently held at Raleigh, speaking the sentiments of the Democracy of North Carolina, most distinctly asserted their opposition to the doctrines recently made prominent, by their tendency to restrict the occupation of the territorial possessions of the United States to those citizens who reside in States where slavery does not exist. The clear and temperate but decided manner in which their determination to resist such opinions is expressed, admonish me of the propriety of urging their wishes upon this House; whilst I assure you that their conclusions are not referable to impetuosity in action, nor have they been rash in their adoption. Their history is that of a quiet, reflecting people, never

involved in the vortex of high party impulse—patient of wrongs, when the remedy was to be seen in the fundamental laws of the country—devoted to the Union and the Constitution—ready to make sacrifices where prudence or patriotism required them, but never willing to abandon other than principles or their rights; always ready to assert their rights as patriots should, but always expecting that enlightened statesmanship, and the high sense of justice which should characterize their fellow-citizens who were called to legislate for our common country, would accord to them what was due, and remedy or remove any cause of complaint.

In asking the indulgence of the committee whilst I endeavor to argue this question, I sincerely hope that I may be believed when I declare that my purpose is not to agitate but to compose—to pour oil on the waters which have been troubled—to present no useless and distracting issues, nor to place our friends in the North and West in a false position before their constituents. We desire no sacrifices of the kind; we only ask for the guarantee of the Constitution; and we feel absurd that we shall not ask in vain. I trust, sir, that I shall be able to present such a view of this question, that all of us may at least acquiesce in taking a position which secures the honor of all, and does equal justice to all; that a good understanding may be established, and peace and good-will be restored to our deliberations. The heirs of a common inheritance, won by the sacrifices and the valor of our ancestors, or accumulated by the progress of our own greatness, should never descend from their high station to wrangle about the partition, or permit folly to estrange those who ought to be bound together by the most sacred bonds.

With this view, sir, I declare that we are content to abide the Missouri compromise; not that we believe that Congress had any right to annex any such condition, or to enact any such law; but the compromise having been made and acquiesced in for near thirty years, there is no purpose entertained by any southern statesman to disturb it now. If this compromise would adjust this difference, if it would compose this trouble, we are content to abide it, and the renewal of its operation recognized by the laws admitting Texas into the Union, and adjusting its territorial limits. In doing this, and entering our protest as to the power of Congress to make the compromise, we say to our

the development of the policy to be adopted in relation to the Territories of the United States. We are called upon to meet the question directly, and to decide whether the Wilmot proviso shall be brought to bear upon the territorial acquisitions of the Mexican war, or in what other manner this vexed question is to be settled.

And here, sir, permit me to say, that I adopt the doctrine of non-intervention on the part of Congress in its fullest extent. As I deny the right of Congress to legislate slavery into existence in any Territory of the United States, so I also deny the right to forbid it. I adopt the language of the resolution of the late Baltimore Convention, as meeting my approbation: "*That all efforts of the abolitionists, or others, to induce Congress to interfere with questions of slavery, or to take incipient steps thereto, are calculated to lead to the most alarming and dangerous consequences, and that all such efforts have an inevitable tendency to diminish the happiness of the people, and to endanger the stability and permanence of the Union, and ought not to be countenanced by any friend of our political institutions.*" Language which most strikingly illustrates the folly, as well as the deplorable consequences, of assuming the right of Congress to interfere with this relation,—a declaration which, if adopted and sustained in good faith, in all its intent and meaning, must forever remove from all our deliberation and inter-course this exasperating difficulty. If the right of Congress to legislate in the premises be granted, then the whole question is settled. There is no limit but their discretion, no safety but the clemency of a majority. But, sir, the framers of that instrument were wise men, whose profound sagacity and immaculate virtue, combined with a patriotism unsurpassed in all human history, qualified them to guard the infancy of the nation which sprung into existence by their prowess, as well as to provide for the development of that greatness which they distinctly foresaw. No aspect of the future escaped their observation, no contingency which might arise was omitted in their provisions; and it is to this Constitution that we refer to adjust this question and fix the principles on which, I trust, we may all agree.

The extent of legislative power over the territories of the United States, which may be constitutionally exercised by Congress, is to be found in the third section of the fourth article of the Constitution, which provides that "Congress shall have power to dispose of and make all needful rules and regulations respecting the territory and other property of the United States; and nothing in this Constitution shall be so construed as to prejudice the claims of the United States or of any particular State." The clear and unquestionable meaning of which must be, that territory is regarded as property, and the rules and regulations referred to are such as shall be necessary to make the territories and other property available. Any rule not needful for this purpose is contrary to the intent and meaning of the provision. No person can suppose that the words "dispose of" can have any meaning by which Congress shall have power to waste, to cede away, or otherwise render the territories of the United States unavailable for the great purpose of supplying the national treasury and ministering to the wants of the people of the United States. Any other construction

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of those words might transfer the treaty-making power to Congress, and give authority to cede away the public domain. It is true, that the power to acquire territory implies the power to govern it when acquired; but it is also true, that such government must be in accordance with the Constitution. But Congress does not acquire territory. The people of the United States acquire it, and have the right to govern it, and have limited Congress, as their trustee, in the name of Government, by the Constitution. Congress could have no power to establish religion or to create titles of nobility in the territories, because expressly denied by the Constitution; and when the laws of the United States are extended over a territory, it must be understood that the Constitution and laws are so extended, and that nothing repugnant to the Constitution can be in force as a law. I know that it is asserted, and that by southern statesmen, that Congress has unlimited power of legislation over the territories; but if this be true, then Congress may, by law, commit the entire government of the persons and property in the territories to the will of a single individual, and thus present the anomaly of a despotism created and sustained by the Constitution itself,—a conclusion so monstrous as only to require the annunciation to carry home the conviction of its fallacy to every mind. (See note A, Appendix.) There can be no doubt of this proposition, that whatever was property when the Federal Government came into existence, under our Constitution, so far as that Government is concerned, must ever remain property. The States, as sovereigns, alone can alter the rights of things within their own jurisdiction, and that by virtue of their sovereignty. The Federal Government is therefore bound to consider as property all that was so considered at its adoption, and the Constitution guaranties the enjoyment of that property in tranquility and security to all the holders, so far as the laws of the United States are operative in the premises. And this is true whenever that property is placed under the jurisdiction of the laws of the United States. Now, the territories are the public domain, the common property of all the citizens of all the States—acquired by the expenditure of the common purse, or purchased by the valor of our people, without reference to geographical distinctions, or domestic municipal regulations. It follows, then, that in the territories of the United States, even before an organized government is instituted, the Constitution and laws recognize the right of property; for none can for a moment assume that the territories of the United States are without law, or that it is necessary that a temporary government should exist to bring them under the operation of law. (See note B.) The Government is bound to protect them from invasion and injury, because they are the property of the United States. Then the question arises—what is the effect of the organization of a territorial government upon the rights of property amongst the inhabitants of the territory so placed under organic law? If the previous reasoning be correct, before such organization all the citizens of the United States had an equal right to go into the territories, and carry with them those subjects recognized as property by the Constitution. If this right be either weakened or destroyed, it must be from the effect of territorial organization. In order to give

that effect, that organization must deprive to the attribute of sovereignty, or to some the whole, or a portion of power. We then inquire, whether Congress of the United States ever exercised such a subject as it, or ever? None, that I know, as a creature, *per se*, for a delegate from the States, as power is delegated, so far as to the territorial and congressional, and not latterly. The Congress, with abundant evidence, made this point of claim; that when Congress, in a treaty, ceded territory by the States in that instrument, it reserved the States respectively and the people of the States, thus declaring that the Federal Government was a mere trustee for the territory; States, not the federal, with well defined and separate powers. If, then, all the citizens of the States had a right to go with their property upon the public domain before territorial organization, if Congress had no right to do so, and as property was never so regarded by the States, and, *per se*, the right was that a territorial organization in the United States, and powers which it did not before possess, were in the Constitution. If Congress should exercise such power, then no right on the public domain, or the *habitations* of a territory does remain, and it passes to either party.

It has been said, with much probability, that territorial legislation have exercised powers denied to Congress under the Constitution, that they have granted bank charters, and created corporations; that they have borrowed money upon the faith of the territorial government, and exercised other acts of sovereignty. Concerning the accuracy of this statement of facts, nothing is proved but that the territorial government, as law at Congress disapproved, and that the territory were not authorized to do. The organization of a corporation is one of the highest powers of sovereignty, for it is creating a legal owner of property, and with the rights of a person, and it is not denied to Congress, because not so, and the powers of which this Federal Government is trustee. It assumes, that under the effect of an organic law extended to a territory and accepted by the inhabitants, the power of Congress is to legislate, and that by the approval of such a law of a territorial legislature, Congress may, by incorporation, charter a bank, which it could not do, *per se*, by its own action. Does not the law of a Territory upon it, both as a citizen of a Territory, and upon the people of that Territory after it was become a State. And if Congress have transferred their power in legislating for why the territory, an argument derived from the laws of a territory, the maxim, that an evil is not to be done, which I am aware there must arise a time when the power of complete sovereignty, which it is, which, true, I shall be a citizen of a territory, and the Constitution itself. Much, sir, will be said, and a reference to facts, as well as the laws of the Government. Our whole policy, and the gain, has been with a view to the independent disposition of the public domain, whether free or to its profitable sale.

When settlers occupied a portion of the public domain as to render it more valuable, it would be a demand for the land, and organic law is not intended to the *habitations*, in a territory, and organic law, and the effect of an organic law, and the sale of land and transfer of title, and the

In these organic laws, Congress has repudiated the idea of sovereignty in the Territories, by reserving the right of reviewing, and repealing if necessary, the laws enacted by the territorial legislature. When the inhabitants of a Territory accept the organic law with all its conditions, the government is then organized, and continues until it expires, *ex vi termini*, in the sovereignty of the State to be formed out of said Territory. Now, the creation of this territorial organization and the existence of this temporary government gave no *jus accensendum* either to this local legislature, the people of the Territory, or to Congress. The laws of the United States, for the protection of persons and property, were extended over them; but it was a government consistent with and according to the Constitution—a government limited by the Constitution, and possessing no authority beyond its grants. So that the right to govern is not in this case a right of absolute sovereignty, but of sovereignty qualified by the provisions of fundamental law. The decision of the Supreme Court, declaring that the right to acquire territory implies the right to govern it when acquired, is predicated upon the assumption that the government to be administered must be according to the Constitution of the United States. They sustain rather than conflicts with the conclusion to which I have arrived. The question then arises, at what time does the right accrue, and to whom, to decide upon and fix the domestic institutions and the municipal law of the territories? And who is invested with that authority? It will be seen, by reference to the same section of the Constitution referred to, as controlling the power over territories, that "Congress may admit new States into this Union." A reference to the Madison Papers will enlighten us as to this provision. A proposition was made to authorize Congress to form new States out of the territories belonging to the United States, which was rejected, and the provision above quoted was adopted. Nothing could have been wiser and more consistent with the principles of the framers of the Constitution. The United States are sovereign States, and the Constitution is a compact of sovereign States; and inasmuch as Congress could not confer sovereignty upon a Territory, it was left to the people of the Territory to assert their own sovereignty, and then, as sovereign, come into the Federal Union. They wisely concluded that an act of Congress declaring a Territory a sovereign State would in fact invest it with no attribute of sovereignty; but that the people of the Territory, at a proper time, being the only source of sovereignty, could make the declaration for themselves. Accordingly, whenever a State has been admitted into the Union, it has been after their constitution has been adopted and their sovereignty announced; and then, as one of our glorious sisterhood, she has been welcomed amongst us. This power was withheld from Congress, and left with the people. Nor is the Constitution silent as to the time when this event shall take place. The inhibition in the Constitution are so clearly marked, Mr. Chairman, as to leave no room for conjecture. In the second section of the first article it is provided that there shall be an apportionment of representation to population, and that each State shall have at least one representative. It was distinctly foreseen that Kentucky, Tennessee, and the

great Northwestern Territory was soon to be filled with inhabitants—soon to demand admission into the Confederation; and with the forecast which marked all their acts, it was fixed when such a demand might be made, and when it would be the duty of Congress to meet it and to comply. The Constitution was made with reference to the extension of our institutions, and the increase in the number of the States. When, therefore, the minority of the territory shall have ceased—when the residents, who have made their homes upon the public domain, now transferred by sale to the occupants thereof, shall have amounted to a sufficient number to give them a right to claim a representation on this floor—then they have reached a position in their existence on which to assert their sovereignty, by adopting fundamental law for themselves, fixing their own domestic policy, admitting or excluding slavery, and doing any other thing which is not inconsistent with republican government. When this constitution is adopted, they have a right to ask, and Congress is bound to admit, the sovereign State into the Confederacy. It cannot be gravely asserted that the sovereignty accrues to the State by the acknowledgment or expression of consent on the part of Congress. As well might the independence of a Government be ascertained by its recognition by other Governments. Independence must exist before it is recognized, and sovereignty must spring from its proper source, the action of the people, and its acknowledgment by Congress admits its previous existence. (See note C.)

When the people of a Territory grow into numbers sufficient to constitute a State under the Constitution, and shall abolish or establish slavery in their constitution, no one has a right to question their authority so to do. I do not invoke the authority of Congress to protect slaves as property in the Territories. I ask for no legislation upon the subject. They are already recognized as property by the Constitution and laws, and the courts afford ample protection to the rights of property. Legal rights must of necessity be decided by the courts. A mere territorial government, owing its existence to an act of Congress, subjecting its laws to the veto of Congress, and leaning for the expenses of its administration upon Congress, can surely lay no claim to the attributes of sovereignty. The Constitution and laws which bind Congress bind them, and they can neither create nor destroy institutions recognized and guaranteed by that Constitution. If I am asked why any particular point of time should be denoted as that in which a Territory may acquire and assert the sovereignty of a State, I reply, that the reason is the same as that which confers the right of self-direction and self-control upon an individual who has reached the age of twenty-one years. A time must be designated, and that decision must be the result of prudence and sound reason. The object of our system is to extend republican institutions; and when a territory shall have passed the years of its minority, and acquired a population sufficiently numerous to entitle it to a representative on this floor, it has all the elements of sovereignty, and can perfect it by the proper combination and concentration of those elements.

But this question is presented in a most practical and important aspect when we consider the

results of the Mexican war. New Mexico and California are integral portions of our territory by the treaty of peace, which we have reason to believe has been ratified between the countries. They will require a territorial organization at our hands, and we are already told by a gentleman from New York, [Mr. MERRILL,] that inasmuch as the laws of those provinces already forbid slavery, it cannot exist within their limits without legislative enactments. To sustain this position, he has referred to the opinion of Lord Mansfield in the case of Campbell against Hall, (1 Cowper's Reports,) where Lord Mansfield lays down the doctrine that the laws of a conquered country continue in force until they are altered by the conqueror; a doctrine which, if taken in its full extent, seems subversive of all the received principles of the law of conquest, and which, however applicable to the English Government, is totally repugnant to our institutions and our fundamental law. There can be no civil dominion over any territory of the United States, which is not founded upon the Constitution. From this source it must emanate, and as soon as either by treaty or by the sword a territory is incorporated within the limits of the United States, the Constitution immediately attaches to it and is operative upon it, and whatever is repugnant to, or subversive of, its provisions must fall before its power. This must be manifest; for, if otherwise, we might have an established religion in those provinces, against the express provisions of the Constitution, and the security of persons and of property might be utterly lost against all the guaranties provided for their protection. The conquered nation would give law to their conquerors, and the result of victory would be the subjection of the victors. It is true, that the laws of nations do recognize the force of all laws, even in conquered countries, which are necessary for peace and tranquillity, until repealed or altered by the conquerors. But it is only of such laws as are not in conflict with the laws of the conquering Power. Whenever the laws in California and New Mexico conflict with, and are repugnant to, the Constitution of the United States, that Constitution at once overrides such laws, and by the very act of cession or of conquest, becomes the supreme law of the land. (See note D.)

It would be a monstrous conclusion at which to arrive, that after all the costs and sacrifices of war, the population of the conquered territory have the power to dictate the terms on which their conquerors shall occupy their country. It would be equally repugnant to the principles of right and justice so to adjust the matter, that a large portion of the citizens of the United States, even the very men whose lives were periled in the war, should be excluded from occupying the land that they had won with their swords. We deny the right of Congress to legislate upon the subject, either to extend or to forbid slavery; we ask for no legislation at the hands of Congress in the premises; neither are we willing that the Mexican population, confessedly inferior in all the elements of civilization and capacity for self-government, should erect a barrier to the emigration of the citizens of fifteen States of this Republic. No, sir; we invoke neither the aid of Congress to legislate slavery into existence there, nor will we admit the authority of the present population to control it, unless in a

condition to be erected into a State government and ready to perfect such an organization. The Constitution recognizes slaves as property. Whenever territory is acquired, it is the property of all the people of all the States, and the Constitution secures to every citizen the right to convey that territory on equal terms with any other citizen of any of our confederated States.

Gentlemen sometimes appear astonished that this subject excites so much interest with the Representatives of the southern States. I think that this surprise will cease when they are advised that in all the phases of this matter, as presented in the shape of alternatives, the South must be forever and cannot gain. If the Missouri compromise extended to the Pacific prevails, (and to this we consent,) the slaveholding States surrender much, and get nothing in return. If the Wilmot Proviso is adopted, all is lost to those States, and all the territories of the United States are monopolized by the citizens of fifteen States to the exclusion of the other fifteen. Should it be determined that so soon as a territorial government is formed, the people of the territory can settle this question legislatively, the same result will most probably follow, inasmuch as emigration is much greater from the free States than from the others. And lastly, should the doctrine that the laws of the portion of Mexico ceded to us by the treaty are in force until repealed by the conquering Power, all that territory is forever closed to the citizens of those States which recognize slaves as property. I am sure that no person can suppose that the southern people or their Representatives are so regardless of their rights as to admit the propriety of such concessions. I could never, sir, return to my constituents after approving of such measures, without a deep conviction that I deserved their contempt and an assurance that I should receive their execration. Neither can I be induced to believe that any considerable number of our fellow-citizens in any portion of the Union, desire such a state of things. A demand so unreasonable, and the operation of which would be so glaringly unequal, can never be made by those who regard the rights of others, or properly estimate the great objects of the union of the States.

The whole of the difficulty in this vexed question seems to me to be the result of a doubt which has arisen whether slaves be property under the Constitution. In these days of progress, it would seem to have been discovered that they are not to be so regarded, and a philanthropic crusade is set on foot to prevent what is deemed the extension of a great evil. So far as this Government is concerned, sir, it is a dry matter of law, and not a subject of transcendentalrodomontade. Gentlemen may indulge in the recreation of philanthropic declamation, either for their own or the edification of others. But, surely, as asserted as I am that I rights are not to be hazarded or questioned upon any such pretence. I entertain no more objection for his opinions on the abstract question of slavery, it is sufficient for me to find a solid and an institution which existed in my State before my birth, and will continue long after my death, an institution in the sacred civil of which I have not been able to discern, to which I refer, not for the peculiar excellencies of our immediate neighbors, but as a source of which we all draw a substantial benefit.

the choice of a residence. I have never lived, and never expect to live, in any portion of the United States where this institution does not exist.

Such, sir, are my opinions. It may be that they are not the opinions of others. I arraign no man for his taste or his conscientious convictions; but I have said thus much because I think all rant and declamation on the general subject of slavery out of place in this discussion. Slaves were regarded as property at the formation of this Government, and have been so regarded by Congress whenever it was necessary to raise money by a direct tax. Even Mr. Justice McLean, whose authority has been invoked to prove that they are not property, belonged to the Congress which passed the direct-tax law, immediately at or about the close of the late war with Great Britain. I presume he voted for that law, as there is no evidence to the contrary. Slaves are therein declared to be property, ordered to be treated as such, taxed as such, and the tax declared to be a lien on the slave until paid. The marshal was authorized to sell and convey the slave under a sale for taxes. Slaves are now and ever have been sold by the marshal under executions at the instance of the United States, and no one has questioned the title thus acquired by the purchaser. Whence, then, can the power arise, by which Congress may forbid the settlement of any of the citizens of the United States on our common inheritance with that which is recognized as property?

With what show of justice can discriminations be made in favor of one species of property and against another? or how can a right which looks for its origin to the exercise of State sovereignty, unimpaired by surrender to the General Government, be brought under the control of Congress? Sir, it is a most serious, a most responsible undertaking, to determine that any portion of our fellow-citizens are to be excluded from the inheritance of their fathers. You ask much, indeed, from us, when you require us to consent to see our children disinherited—to register our approbation of the decree which illegitimizes them as American citizens. Much more is asked than will ever be granted. If this reproach is to be upon us, it must never be by our own consent. The broad lands won by our fathers of right belong to us all. The blood which flowed upon the plains of every battlefield from Saratoga to Camden, came from the wounds of patriots who, from the North and South, buckled on their armor to do battle for liberty—whose bold and manly hearts were never under the influence of unpatriotic feelings—who sought no local or sectional advantages, but regarded all this broad land as a common treasure to enrich themselves and their posterity. Happily for them, the delusion (if one) lasted long enough to save their honored faces from a blush at our degeneracy. Happy was his lot, who slept on the field of his glory; three happy those who saw in the distance their country's prosperity, and left the world before dissensions and distrust threatened to bring distress where they looked for happiness, and dishonor where they looked for glory. Let it not be reserved for us, now that the family of States has increased from thirteen to thirty—when Heaven has rained prosperity upon us in golden showers—when the eyes of a world, truzzling for their rights, are turned to us with agonizing anxiety—when the consum-

mation of our glory and our power as a people can scarcely be conceived by the most vivid imagination—when the obedient lightning coursing along on the wires of communication will ere long place our kindred on the Pacific and Atlantic shores again in the family circle, and carry in a moment the tale of joy or of sorrow over rivers, and forests and prairies, and plains—when distance shall no longer forbid association, and light and knowledge shall make their aggressive advances on darkness and barbarism—when the resources of our territories, developed under the creative energies of our wonderful people, shall, year after year, greet us with the organization of a new State, the introduction of a new sister into the family, bright with all the paraphernalia of virgin sovereignty. Let it not, sir, be reserved for us, in an unworthy struggle for political ascendancy, or a more unworthy grasping for exclusive privileges, founded on sectional claims, to create and awaken the elements of a storm, which shall sweep over our bright and happy country, like the angel of destruction, leaving nothing but the wreck of liberty and the ruin of social institutions; which shall show to the world the tomb of liberty, the fragments of its temples; where the friends of our race shall weep, and the enemies of human advancement shall rejoice. No, sir; let a more enlightened policy prevail, a more generous impulse give direction to our measures; let the heaven-born spirit influence us which influenced the patriarchs, who, ascending to the mountain top, agreed to divide their wealth and divide their territories, the elder giving the younger the choice, for "it was not meet for them to differ, for they were brethren." Let the lines of the Missouri compromise extend to the Pacific. Take that invaluable territory, including the richest and the best which the sun shines upon; but leave us our rights, shorn indeed of much of their extent; and although you hold in your hands the sword of the law to exclude us, we will place no obstruction to emigration from your portion of this great Republic.

Mr. Chairman, I present to the committee the resolution of the Baltimore Convention which denounces, in the strongest terms, the interference of Congress with the institution of slavery, or even the taking of incipient steps thereto. I offer to our northern and western brethren the Missouri compromise, onerous and exacting as it is upon the South, extending its provisions to the Pacific, including the fine soil, the magnificent harbors, and all the local advantages which nature has appropriated to these geographical limits. I admit the right of the inhabitants of the Territories to make their own municipal institutions, whenever they shall reach that amount of population which shall entitle them to a representation on this floor. I shall welcome them, whether forbidding or recognizing slavery, into the Union. I am contented to leave the question in the Territories up to that time, to the learning and the purity of our courts. But I protest against the right of a few *habitans* of a Territory to exclude the citizens of fifteen States of this Union from the occupancy of the common public domain. I protest against the authority of a law which they may enact which shall override the Constitution, and leave us but the empty name of protection by appeal. I am willing to leave the question whether the laws of

conquered New Mexico and California shall control us, to the courts. I invoke no legislation on the part of Congress, to protect, to extend, or to limit slavery. Satisfied with the guarantees already existing, coeval with the Constitution and coextensive in their operation, in the main of the South, I ask you to keep your hands off of this subject—leave it where the Constitution has placed it, and we ask no more. We are satisfied, that whilst the Constitution overrides any law enacted by Congress which conflicts with its provisions, it will certainly override any law existing in a conquered territory equally repugnant to its requirements.

In the spirit of compromise, in the temper of patriots, let us avoid exasperating and unnecessary contests, and teach those who succeed us that all this magnificent country is their own. From the reefs of Florida to the shores of our mighty lakes—from the beach lashed by the Atlantic wave to the broad and tranquil Pacific—from the cold regions of the north to the soft climate of our southern boundary, the citizen of this Republic has his home wherever he may choose to select it, secure in the enjoyment of his rights, guaranteed by a Constitution which is venerated and revered by millions of freemen. We, sir, are admonished that our personal interest, though great, is much smaller than that of those we shall leave behind us. Let us who have enjoyed the inheritance which our fathers only saw in the distance, inasmuch as that we have ascended higher, have a more extended horizon,—let us tell our children, that, with counsels calm, wise, patriotic, measures just, and aims true and honest, there is a yet brighter and more glorious future for them. I speak for my own Carolina—who first gave utterance to a declaration of independence—whose hardy sons have found wealth, honor, and distinction in all the South and West—whose colonists, penetrating the wilderness, tamed it, and called into life and sovereignty her noble daughter, Tennessee,—for her and her sons I speak, when I declare that she recognizes no authority on the part of Congress or the inhabitants of the Territories to expel them from their common inheritance, the public domain. She asks no favors but such as all may claim; she seeks no advantages but such as intelligence, energy, and industry will secure. In this noble competition she will contend with her sister States; in the glories of such a victory all will equally partake.

But, sir, we meet with embarrassments on this subject which are exceedingly annoying. We find Southern statesmen, surrendering this great constitutional question, in the admission of the right of Congress to legislate authoritatively and without limit upon the admission of slavery into the Territories. We find among ourselves those who give up the last hopes of the South, and surrender the citadel to the besiegers. Precedent is invoked to establish the right to disinherit us. The evil not only of being disinherited, but the penalty of crime, the forfeiture of felony, is fixed upon us, and we are required, as suppliants, to ask that as mercy which we should claim as a right. A distinguished Senator of my own State, [Mr. Bayard,] a gentleman of high attainments and extended reputation, in a recent speech on the Oregon bill, admitted the right of Congress to legislate for the exclusion of slavery in the Territories, but placed the South upon the principle of expediency, and

the sense of justice of the Federal Legislature. Gracious Heaven! are we pleased with this? Is our only, our last hope, the verdict of a majority whose interest, whose feelings, and whose organization fix that verdict against us? Can any man whose eyes are to the fact that the progress of civilization and of power is against the South? Every concession was made to Southern interests, even the slave trade was held sacred and protected by the Constitution—when the power and interest of the South were indispensable, and never until the Missouri question arose was the power of Congress on this subject regarded as a matter of such moment. But the scene is changed. The soil, the lovely lands ceded by Virginia, the great mother of commonwealths, have been transferred to the South, and she stands overshadowed, her soil dark and unfruitful, and, unlike the setting sun, if ever she retain her relative size, to compare with the loss of the influence of her noontide splendor. The lion's share of the territory has been already awarded to the States who demand it, and do not recognize slavery. And are we left to the mere pique of expediency, in the soil that is our rights? And do Southern statesmen give the first note of retreat? Do they then fall fast in their hands? Are we to be, as our fathers said, to Congress, with no safeguard but expediency? Already has a Senator [Mr. Niles,] announced that this is a question of power, and of power only. The horse-leech, and the grave-digger, Enough; but the lust of power can never be satisfied. Gaining strength, and increasing numbers, it will never concede the advantages which moderate its demands for the same project. And Southern statesmen yield the question? The red blood of the South has flowed like water on this side have they fallen, in the forests of the battle, with the soldiers of every State of the Union. And before the requiem is sung over the clod which covers them, their fathers and brothers and children are told, The price is not for you; the soldier's blood cannot be diluted by his relatives and friends, because the institutions of their States differ from those who control a majority of votes in Congress. The emigrant from every portion of the world, the convicts, the paupers, the loafers, and the labor of all Europe—may come and stand upon the lands red with the blood of our brave and our brave, and turn them and their property away. They may say, It is a good land, indeed, and won with your blood, but there is a dispensation which gives it to us, who have no kindred feelings, no common sympathy with you. Our own children are cast out, and the stranger is admitted. Sir, I had the emigrant to our shores. May our broad and fertile prairies, and our boundless and uncultivated domain, yield them abundance—our institutions, liberty. Let their tears of sorrow be dried, and the gaunt genius of famine forever depart from them. Let them become rich, and free, and happy. But cast not out the children of the soil; do not let the descendant of revolutionary fathers. All Southern statesmen concede the power, but deny the expediency? I remind gentlemen that those who possess power "can trim the times to their necessities." Our constituents will hold us to a strict reckoning. It may be true that "fortune and the South part here—even here do they make hands."

We may be regarded as the receding States. We must bear it as we may; but we will, with dignified remonstrance, make continual claim of our rights.

APPENDIX.

NOTE A.—The proposition that Congress has unlimited power over the Territories has been broadly asserted by the gentleman from Indiana, [Mr. PETTIF,] who, in reply to a question propounded to him by myself, whilst discussing this subject, declared that Congress had a right, in the Territories, to establish a hereditary monarchy, an established religion, titles of nobility, and even to sell the inhabitants into slavery; and that there was no limit but the will of the National Legislature in the premises. The most obvious and ample refutation of such a doctrine is to be found in its monstrous results.

NOTE B.—In the case of *Loughborough vs. Blake*, 5 Wheat., 317, Chief Justice Marshall decides that the words directing "taxes, imposts, and excises to be uniform throughout the United States," includes, in the terms United States, (as descriptive,) all the States and Territories of the United States; and expressly rules, that the power under the Constitution to levy taxes, gives Congress the right to levy taxes in the Territories—placing the territory belonging to the United States *de facto* under its laws, and of course under the Constitution. This

case clearly sustains my argument, and enforces my conclusion. If the Territories are out of the United States, and not protected or governed by our fundamental law, then the inhabitants are aliens, and not citizens; a question never yet gravely raised. The case in 6 Cranch, 264, sustains the same principles. The revising power of Congress, under the organic law to Territories, of territorial legislation, springs from the structure of that law accepted by the people of the Territory as a condition of their existence under that regulation, and does not grow out of any inherent power IN CONGRESS.

NOTE C.—The case of Missouri affords a striking illustration: Missouri adopted her constitution in 1820, and continued a sovereign State, governed by her own laws, and was admitted into the Union by proclamation in 1821, after complying with an offer, made by resolution, on the part of the Government of the United States, and accepted by the Legislature of Missouri in her sovereign capacity (See Statutes at large, 1820, 1821, pages 545, 645.)

NOTE D.—Vattel expressly declares, that all the laws and institutions of a conquered country which conflict with the fundamental law of the conquering country, must cease to be operative. He instances a case in which the towns of a conquered country had, previously to the conquest, sent representatives to a legislature. After their conquest by a Government which did not admit of representation, he says they must never again think of it.



