SPEECH

OF

HON. T. H. BAYLY, OF VIRGINIA,

IN THE HOUSE OF REPRESENTATIVES, MAY 16, 1848,

In Committee of the Whole on the state of the Union on the Bill making appropriation for the payment of navy pensions for the year ending 30th June, 1849.

Mr. BAYLY took the floor, and spoke as follows:

I believe, Mr. Chairman, I have never before availed myself of the latitude of debate allowed in Committee of the Whole, to discuss subjects not immediately under consideration. But it will be recollected that several speeches have been delivered—doubtless designed to influence opinion out of this House—defending the power of Congress to prohibit slavery in the Territories of the United States, and also the expediency of its exercise. These speeches have not as yet been met. It is important they should be; and this is my apology for entering upon the discussion now. And in doing so, I shall be compelled, however reluctantly, to repeat, to some extent, views which I had the honor to present at the last session of Congress.

I wholly deny the power of Congress to legislate for the Territories in respect to their domestic affairs. Sir, this Government is one of delegated powers; and all powers not delegated in the Constitution, by the very terms of that instrument, are reserved to the States and the people. The Congress has no more authority to exercise a power not delegated, than it has one absolutely prohibited. This Government possesses no sovereignty. It is true, the States have delegated to it the exercise of certain sovereign powers; but the sovereignty itself is in the people, and is inalienable. This Government has no innate powers. Its powers are all derivative. These positions will not be disputed by any one who understands the first principles of the republican faith. Bearing them in mind, I ask, in what clause of the Constitution do you find the power *to legislate* at all, much less to adopt *irrevocable* legislation relative to the internal affairs of the Territories which we now hold, or may hereafter acquire? Mark, I do not ask for the power to propose *forms of government* to the Territories, but for the power *to legislate* for them in respect to their domestic affairs. I do not concede the first; but it is not necessary for my argument that I should dispute it. I know it has been exercised from the foundation of the Government; and some very sound republicans have regarded it as fairly an incident to the power of acquiring territory. This is not satisfactory to me. I have great doubts about our power to establish for the Territories even temporary governments, and these doubts are strengthened by the proceedings of the Convention which framed the Constitution. On the 18th of August, Mr. Madison submitted, in order to be referred to the committee of detail, among others, the following power, as proper to be added to those of the general legislature:

"To dispose of the unappropriated lands of the United States.

"To institute temporary governments for the new States arising therein."

The first branch of this proposition was virtually adopted. What became of the second? It shared the fate of the proposition to confer upon Congress the power to grant charters of incorporation, to establish a university, and to construct canals, &c. The Convention refused to confer the power contained in it. In the only Territories which we then possessed, a temporary government already existed, and the Convention was willing to leave it to the people of the Territory themselves to make such alterations as might become necessary. I am very much inclined to the opinion, that the only legitimate authority which the territorial governments possess over the people—I speak of the people at large, and not the officers of the territorial governments—is derived, not from the action of Congress, but the acquiescence by the people of the territories in them. We have performed the part of another Locke, and proposed constitutions in which the people of the Territories have acquiesced; but they have derived their sanction rather from the last proceeding than the first. Be this, however, as it may, I say the power of legislation is a very different thing.

This is no fanciful distinction. It is one which is very clear to my mind, and was familiar to the framers of our Constitution.

A constitution is that by which the powers of government are prescribed and limited; a law, by which the conduct of individuals is regulated and controlled. A constitution is a rule of action to the officers and the different departments of the government; a law, the rule of action to the community at large. No matter from what source a constitution proceeds, all those who take and hold

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office under it, are bound by it as long as they do so. It is their commission. By accepting office under it, they have consented to be bound by its provisions. And not only may public officers become bound in taking office underit by a constitution which has been proposed to them by others, but a whole community may assent to it by complying with its forms. But very different is the condition of the people at large with respect to laws. I know of no way by which a community can assent to a law, except in its recognition or enactment by a legislative body composed of their representatives. A constitution is the *form* of action; legislation is *action* itself. The one is the means; the other the result.

This is a distinction familiar in our history. Our forefathers never objected to the British King granting to the colonies charters containing forms of government; and they never were regarded as acts of legislation, which could only be instituted by Parliament. They were restrictions on the government, voluntarily imposed by the government itself, for the benefit of the colonies. But they always denied the right of the mother country to legislate in reference to the domestic affairs of the colonies. These charters were little else than constitutions, in our familiar political sense of the term, and in many instances were acquiesced in by the people long after the British authority was expelled;—indeed, in one case, until within a very late period. In others, they were changed in a short period after the declaration of independence, either at the instance of the colonies themselves, or in obedience to the recommendation of the Continental Congress; but generally by conventions, having no direct authority to do so. And in consequence, at one time the validity of those constitutions was very much questioned.. This was particularly the case in Virginia. The convention that framed her late constitution convened without any sanction of law; and it was not deputed by the people with express reference to the formation of a constitution. The result was, that its authority was questioned. But it was maintained "that the people had received it as a constitution. The magistrates and officers, down to a constable, had been appointed under it. The people had felt its operation and acquiesced; and it is confessedly their assent which gives validity to a constitution." These views prevailed, and the constitution, thus indirectly receiving the sanction of the people, endured for more than half a century; and even after such a lapse of time, many of our people were unwilling to change it for any other. In my view of the case, the territorial governments which we have established have derived their sanction from the same source.

I recur to the question I just now asked: In what clause of the Constitution do you find the power of Congress to legislate for the territories relative to their domestic affairs?

The clause from which the power in Congress to legislate for the territories is most usually derived, by those who contend for it, is the 2d clause of the 3d section of the 4th article, which is in these words:

"The Congress shall have power to dispose of, and make all needful rules and regulations respecting, *the territory or other property* belonging to the United States."

Now, it is perfectly evident, from the language itself that the authority given is over the territory as property. The term "territory" is here used in a very common sense, as synonymous with land; and it is concerning this, when it belongs to the United States, about which Congress may "make all needful rules and regulations." And it may, without doubt, under the authority given, pass such laws concerning the public lands situate in the territories as to it may seem needful. But surely this clause confers no power upon Congress to make rules and regulations concerning *persons* in the territories or their private property. It is only concerning "the territory or other property *belonging* to the United States," that we can make rules and regulations.

When the Convention which framed the Constitution designed to confer powers of legislation, it used appropriate language to convey its meaning, and language very different from that of the clause under consideration. And here permit me to remark, before I refer to the clause in which this is done, that the Constitution is as remarkable for its literary execution as for the great political wisdom imbodied in it. There are no useless phrases; there is no tautology; there is no looseness of expression. The precise term, appropriate to convey the idea designed to be conveyed, is always used. Those who have studied the debates of the Convention must have been struck with the care and minuteness with which the exact meaning of every word and term was criticised. There is no instance where, when different phraseology is used, it is not designed to convey different meanings. When the Convention designed to confer upon Congress the power of legislation, they did not use ambiguous and doubtful expressions, but such as are precisely appropriate to express the idea. This is done in the section in which the authority is conferred upon Congress "to exercise exclusive legis-'lation in all cases whatever, over such district (not 'exceeding ten miles square) as may by cession of 'particular States, and the acceptance of Congress, 'become the seat of Government of the United 'States; and to exercise like authority over all 'places purchased by the consent of the legislature 'of the State in which the same shall be, for 'the erection of forts, magazines, arsenals, dock-'yards, and other needful buildings." Here are words used appropriate to confer the power of legislation; and you are not permitted to suppose that the Convention designed to confer the same power in another clause, when they use different language, not at all appropriate. Indeed, in this clause, the power of legislation over distinct places is conferred; and if there was any other over which it was designed to be conferred, here was the proper place to have done it; and doubtless the place where it would have been done. For the Convention evinced, as was very natural, a purpose of grouping all similar powers together.

But, so far from this being the case, the clause under consideration is not found in the section of the article containing an enumeration of the powers of Congress, but in the one containing restrictions upon the States. The Constitution is very remarkable for its order and arrangement; attention to which, in construing its different provisions, is exceedingly important. The preamble declares what are the ends to be attained by it.

The first article refered to the legislative depart-

ment. Its first section provides that "all legisla-'tive powers herein granted shall be vested in a 'Congress of the United States, which shall consist 'of a Senate and House of Representatives."

The next seven sections prescribe the mode of election, the qualification of members, and the form of proceeding in the two Houses. The 8th section defines the powers of Congress. It commences: "The Congress shall have power," and then follows an enumeration of the distinct and substantive powers of Congress, among which is the power of legislating for several different places; but the Territories are not of the number. The 9th contains the absolute prohibitions upon Congress; and the 10th, the absolute prohibitions upon the States.

The 2d article relates to the Executive. It prescribes the mode of election, the qualification, and the duties of the President.

The 3d is concerning the Judiciary, and regulates its powers and duties.

The 4th article—the one in which the clause under consideration is found—contains restraints upon the States, coupled with the grant of power to the General Government to the extent of those restraints, but to no greater extent. This will be apparent upon a careful examination of its different sections. The 1st section declares that "full 'faith and credit shall be given in each State to the 'public acts, records, and judicial proceedings of 'every other State; and the Congress may by gen-'eral laws prescribe the manner in which such 'acts, records, and proceedings shall be proved, 'and the effect thereof." Here the States are restrained from passing any law which shall impair the full faith and credit which this section declares shall be given to the public acts, records, and judicial proceedings of the several States; and the power is given to Congress to provide for securing to them that full faith and credit. The 2d section declares that "the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States." This section restrains the States from passing laws interfering with the rights of general citizenship, which are secured to all the people of the United States, and enables Congress to pass laws to secure them.

The second clause of this section declares:

"A person charged in any State with treason, felony, or other crime, who shall flee from justice and be found in another State, shall, on demand of the executive authority of the State from which he fled, be *delivered up*, to be removed to the State having jurisdiction of the *crime*."

This clause forbids the States from making their territory an asylum for fugitives from justice from the other States, and empowers Congress to pass laws providing for the manner in which the fugitive shall be delivered up.

The third clause declares that—

"No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall *be delivered up* on claim of the party to whom such service or labor may be due."

This clause is similar to the other. The States are prohibited from passing laws to obstruct the recovery of fugitive slaves, and Congress empowered to provide by law how they shall be delivered up.

The 3d section prohibits the States from forming a new State within any of their jurisdictions, or by the junction of two or more States without the consent of Congress; and it authorizes Congress to admit into the Union all other new States not thus formed.

Then comes the clause under consideration:

"The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States."

But for this clause, the States within which the territory and other property of the United States might be situated, could legislate in reference to it, precisely as they can legislate in reference to the land and other property of individuals. And this clause was designed to restrain this right in the States by virtue of their general sovereignty, and confers the power on Congress to make all of those rules and regulations.

The fourth section declares that—

"The United States shall guaranty to every State in the Union a republican form of government, and shall protect each of them against invasion; and, on the application of the Legislature, or of the Executive, (when the Legislature cannot be convened,) against domestic violence."

This clause (as Mr. Madison says in the Federalist) presupposes the existence of a republican form of government in the several States; and it is designed to prohibit them from forming a monarchical, or any other than a republican form of government; and lest, perchance, it might be attempted, upon the pretext that a republican government did not afford a sufficient protection against invasion and domestic violence—which notion a good many people at that time entertained—the last clause was inserted to provide against it; and it imposes the duty in the first case, without qualification, upon all the States to protect each of them against invasion; but, to prevent them from interfering, unasked, with the domestic affairs of any of the States, they are only to act, in the second, upon the application of the State itself.

The fifth article provides the mode in which amendments of the Constitution are to be made; the sixth secures the supremacy of the Constitution and laws of the United States; and the seventh provides for the manner of the ratification of the Constitution. This is the whole of the Constitution as it came originally from the hands of its framers. It will be seen that it contained many restraints upon the States, but comparatively few upon the General Government. Most of its restrictions were such as grew out of its character as one of delegated powers. This excited the jealousy of the States; and they proposed a number of amendments, every one of which created additional restraints upon Congress, but not one enlarging its powers. The most important of which is the tenth, which declares:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Thus showing, that the feeling which prevailed was hostile to enlarged powers in this Government; and in construing the Constitution, the rule should be, to carry out the spirit in which it was adopted.

It is seen that each clause of the fourth article is in keeping with the rest, and that in every one of them there is a restraint of power in the States, and a correlative power conferred upon Congress; and in no instance does the power conferred upon Congress go any further than to supply in it the

power prohibited to the States. When, therefore, you have ascertained the extent of the power prohibited to the States, you have ascertained the extent of power conferred upon Congress.

It seems to me that there can be no doubt about these principles. How do they apply to the case in hand? We have seen the extent of the prohibition upon the States; to that extent, and no greater, is power conferred upon Congress. The States are forbidden "to dispose of, or to make rules and regulations respecting, the territory or other property of the United States;" and the power to make such is confided to Congress, with the restriction that they shall be "*needful* rules and regulations." This is the extent of the powers prohibited and conferred; and it is seen that they are commensurate.

It will hardly be contended that the clause in question prohibits the States in which the public lands are, from legislating upon the subject of slavery, or any other than the public lands and other property of the United States; or that it confers any power on Congress over slavery in those States, or over anything else than the property of the United States. As far as the States are concerned, there is no difference of opinion. But is there any difference, in this respect, between the States and the Territories? The power in Congress, conferred by the clause under consideration, "to dispose of, and make all needful rules and regulations respecting, the territory or other property of the United States," is not confined to the Territories. Congress has the same power to make these rules and regulations in the States where "the territory or other property of the United States" is situated, as it has in the Territories. And this power is constantly exercised without question. But does any one suppose that that power authorizes Congress to legislate in reference to any other subject within the States, than the territory and other property of the United States? Does it authorize Congress to interfere with the subject of slavery in those States? If it does not in the States, why should it in the Territories?

Before dismissing this branch of the argument, I desire to call the attention of the committee to the precise language of the Constitution. It is, "the Congress shall have power to dispose of, and 'make all needful rules and regulations respecting, '*the territory or other property belonging to the United States.*" The word used is "THE TERRITORY *or other property belonging to the United States*," and not the word "*Territories*," as it is usually quoted by those who contend that the clause confers powers of legislation on Congress.* Now, if the clause had been as it is quoted, there would have been more plausibility in the argument. Then it might have been argued with some show of reason, that the rules and regulations which Congress was authorized to make, was respecting "*the Territories*" as political organizations; but the fact that that word is not used, which was the appropriate one to convey that meaning, but the singular "*territory*"—and that, too, in connection with "*other property belonging to the United States*"—shows that it was in reference to the territory as land, as property, *belonging* to the United States, that Congress was to make rules and regulations, and not in respect to the Territories as political bodies.

It appears to me very clear, that the second clause of the 3d section of the 4th article, confers upon Congress no power of legislation for the Territories now held, or hereafter to be acquired, except such as may concern the Territories *as property*. It is not pretended to be derived from any other clause. Those who talk about its being an inherent power, do not derive it from the Constitution, but from some other source than the Constitution; whence, I am sure I do not know, as I never heard till lately that this Government possessed any powers not granted to it in the Constitution, either expressly or by implication.

I have thus shown that the Constitution confers no authority upon Congress to legislate for the Territories, except in reference to the public lands. I now take higher ground. I maintain that not only no such authority is delegated by any provision in the Constitution, but that it is in direct conflict with some of them, and with the spirit of the whole instrument.

The Constitution of the United States provides for the admission of new States into the Union. The third clause of the second section of the first article declares, "that representatives and direct 'taxes shall be apportioned among the several States 'which may be included within this Union, according to their respective numbers, which shall be 'determined by adding to the whole number of free 'persons, including those bound to service for a 'term of years, excluding Indians not taxed, three-'fifths of all other persons."

Here we find, that representation of slaves is expressly provided for in new States to be admitted into the Union. This proves conclusively that the framers of the Constitution contemplated the future admission of slave States. The new States to be admitted, which were more particularly in the mind of the Convention, were undoubtedly those which it was contemplated would be carved out of the territories which we then possessed, and which it was daily expected we would acquire by the cession of the States. It was known to the framers of the Constitution that territorial governments would, from necessity, precede the organization of States. Can any one, at all conversant with the history of the Constitution, for a moment believe that it would have been adopted, if it had been understood that Congress might prohibit slavery in territories? Sir, if there was one feeling which more than any other characterized the proceedings of the Convention, it was a settled distrust on the part of the southern States of the northern and eastern States on the subject of slavery. The Constitution itself shows this. Look at the guarantees and safeguards contained in it, which were insisted upon by the South as "*sine qua nons.*" With these notorious facts staring us in the face, can any one believe that this means of war upon slavery—the right of legislation for the territories upon the subject of slavery, more dangerous than any other—would have been quietly conceded by the South? Sir, it is impossible. Who, at all acquainted with the history of those times, believes for a moment that the Constitution ever would have been adopted *if* it had been understood that it conferred such a power upon Congress? When the South insisted upon safe-

* See the address of the Democratic members of the Legislature of New York, April, 1848.

guards and guarantees in one part of the Constitution, as a condition of their adopting it, can any one believe they would have conceded in other parts powers which would make them all nugatory? There is no one who believes this. Then the solemn question arises, which I beg gentlemen to consider calmly,—Can this Constitution last, if powers are exercised in violation of it, the grant of which would have prevented its adoption?

The Constitution guaranties to each State a republican form of government—the fundamental principle of which is the right of self-government. The very definition of tyranny is to be subject to laws, in the enactment and continuance of which we have no voice; the very definition of republicanism is the right to govern ourselves. And yet gentlemen professing to be republicans come here, and not only claim the right to legislate for a people without consulting them, but absolutely to make that legislation irrevocable.

This attempt on the part of Congress to legislate for the Territories is in violation of a fundamental principle, to maintain which our forefathers waged a war of seven years duration, and of unparalleled hardships and suffering. The British Government claimed the right to legislate for the colonies in relation to their internal affairs. But the colonists resisted, upon the ground that it was the essence of tyranny to subject men to laws in the enactment of which they had no voice. It was proposed to remove this objection by granting them representatives in Parliament. But the colonists declined it, upon the ground that Parliament even then would not have the essentials which make representation a safeguard. These are, that the representative should feel his own laws, and that those upon whom they are to operate should have a periodical power of removing him. The people of the colonies would have no power to remove a member of Parliament elected in Great Britain; nor would the laws passed by a majority in that country, but operating exclusively in this, affect any individual of that majority. Such a representation, therefore, was regarded as worse than a mockery, as, by being present there by our representatives, it would seem to sanction laws passed in violation of the essentials of representation. And this essential principle, in the maintenance of which our forefathers poured out their blood like water, lies at the very foundation of our system of government, and suggested the existing distribution of powers between the General and the State Governments. All general powers are delegated to the first, and all local powers are reserved to the last. Look through the whole range of Congressional powers, and you do not find one which, when exercised, does not operate upon the people of the whole country, and affect the constituents of every representative who exercises them. All local matters are left exclusively to the States. And this is done as much because the vital principle of representation requires it, as because we have not the local knowledge which would enable us to legislate wisely. How violently do these principles of our system conflict with the power now claimed to legislate in reference to the internal affairs of the Territories! The precise portion of the people upon whom alone the laws are to operate are exactly the only portion who would have no hand in their enactment; and the constituents of the representative who passed them, and the representative himself, would be entirely exempt from their operation. Could there be a better description of tyranny than this? And yet persons, calling themselves republicans, maintain it! I had hoped that such doctrines would have been left to the advocates of despots.

In this connection, I desire to read an extract from the writings of John Taylor, of Caroline, of whom Mr. Jefferson said he had never written a line which he did not approve:

"But this feudal power of annexing conditions to the settlement of a conquered or acquired territory, by the government of the country making the acquisition, has ever been exploded as tyrannical both here and in England. One of our principles in the colonial state was, that emigrants to such territories carried with them their native rights. The colonists claimed the rights of Englishmen, and not only obtained them, but have, I hope, greatly extended them. But this would not be the case if our emigrants should be subjected to a diminution of their native rights by the pleasure of Congress. All of them enjoyed the right of forming local constitutions and laws before their emigration. If Congress cannot legislate over the States from whence they removed, and may do so by annexing conditions to a trust, over that which the emigrants from these States may create, it is obvious that these citizens must have lost some very important native rights by an emigration from one part of our country to another. If the colonists emigrating from England were correct in asserting by force of arms that they brought with them all the rights conferred by the English system of government, our emigrants may also contend that they carry with them all the rights conferred by our system. *Among these, the unconditional right to make their own local constitutions and laws, without being subject to any conditions imposed by an extraneous authority, has been the most important, and universally exercised by every State in the Union.*"

Every one of these principles applies, with increased force, to citizens of any of the States emigrating to the Territories. They carry with them all their rights, the most important of which is the right of self-government.

The practice of the Government has not, as seems to be taken for granted in this debate, been inconsistent with these views, as I will proceed to show; and I must here beg the indulgence of the committee for some minuteness of detail.

First, of the ordinance of 1787, about which we have heard so much. In the first place, I do not hesitate to say, that that ordinance originated in a palpable usurpation of power by the Congress of 1787. The articles of confederation conferred upon Congress no such power. Indeed, they conferred scarcely any legislative powers whatever. The powers conferred were mainly executive, and related to our foreign relations. The Congress, under the confederation, was rather a many-headed executive than a legislative body.

The Congress of 1784 seemed to concede that they could not legislate for the Territories; and they attempted to give validity to what little they did, as a "*compact.*"

This will be apparent from the history of the transaction.

On the 1st day of March, 1784, the delegation in Congress from Virginia executed her deed of cession of her territory northwest of the river Ohio, in which she ceded to the United States "all of her right, title, and claim *as well of soil as of jurisdiction;*" but stipulated "that the French and Canadian inhabitants, and other settlers of the Kaskaskias, St. Vincents, and the neighboring villages, who have professed themselves citizens of Virginia, shall have their possessions and titles con-

firmed to them; and shall be protected in the enjoyment of their rights and liberties."

It must be borne in mind in this connection, that at that time there were no white inhabitants in the territory except these Canadian and French inhabitants and settlers.

On the 19th of April, 1784—not quite two months after the execution of the deed of cession—Congress took into consideration the report of the committee, consisting of Messrs. Jefferson, Chase, and Howell, of a plan for a temporary government of the Western Territory.

The plan as reported contained this clause—

"That after the year 1800 of the Christian era, there shall be neither slavery nor involuntary servitude in any of the said States, otherwise than in the punishment of crimes, whereof the party shall have been convicted to have been personally guilty."

And on the motion of Mr. Spaight, these words were struck out.

On the 23d of April, Congress resumed the consideration of the subject, and adopted several articles which they directed should be formed into "*a charter of compact.*" The following is the substance of those articles:

The 1st declares, "that so much of the territory ceded, or to be ceded, by individual States to the United States, as is already purchased, or shall be purchased of the Indian inhabitants and offered for sale by Congress, shall be divided into distinct States;" and it then goes on to prescribe the manner of their formation.

The 2d provides that the *free* male settlers of full age, "on any territory so purchased and *offered for sale*," shall meet within their State "for the purpose of establishing a temporary government, to adopt the constitution and laws of any of the original States; *so that such laws nevertheless shall be subject to alteration by their ordinary legislature*," &c.

The 3d provides that when any such State shall have 20,000 inhabitants, a convention shall be called of them, to form a permanent constitution and government for themselves. But it is provided that the temporary and permanent governments be established on these principles as its basis:

1st. That they shall forever remain a part of this confederacy of the United States of America.

2d. That they shall be subject to the Articles of Confederation in all those cases in which the original States shall be so subject, and to all the acts and ordinances of the United States in Congress assembled, conformable thereto.

3d. That they in no case shall interfere with the primary disposal of the soil by the United States in Congress assembled, nor with the ordinances and regulations which Congress may find necessary for securing the title in such soil to the *bona fide* purchasers.

4th. That they shall be subject to pay a part of the Federal debts contracted, or to be contracted, to be apportioned on them by Congress according to the same common rule and measure by which apportionments thereof shall be made on the other States.

5th. That no tax shall be imposed on lands the property of the United States.

6th. That their respective governments shall be republican.

7th. That the lands of non-resident proprietors shall in no case be taxed higher than those of residents within any new State, before the admission thereof to a vote by its delegates in Congress.

The 4th provides "that when any of *said States* 'shall have of free inhabitants as many as shall 'then be in any one of the least numerous of the 'thirteen original States, *such State* shall be admitted by its delegates into the Congress of the United 'States on an equal footing with the said original 'States."

The last provides "that the preceding articles 'shall be formed into *a charter of compact;* shall be 'duly executed by the President of the United 'States in Congress assembled; shall be promulgated, &c.; and shall be unalterable *from and after* 'the sale of any part of the territory of such State."

This, with the article relative to slavery, which we have seen stricken out, comprised the substance of the report of the committee.

It will be seen that, during the interval which would elapse before the formation, in the mode directed, of a temporary government, and the adoption of the constitution and laws of some one of the original States, there was no provision for the preservation of the peace, &c. in the territory. To remedy this, Mr. Gerry moved a proposition, which was adopted, in these words:

"That measures, not inconsistent with *the principles* of the confederation, and *necessary* for the preservation of peace and good order among the settlers in any of the said *new States*, until they shall assume a temporary Government as aforesaid, may, from time to time, be taken by the United States in Congress assembled."

It will be seen from this analysis of the first action of Congress relative to the territory of the United States—action which was participated in by the first statesmen of the Republic, comprising such men as Jefferson, Sherman, and Gerry—that, notwithstanding Virginia had ceded her jurisdiction as well as soil, they did not propose to legislate for the territories, or to interfere with their Government, any further than the absolutive necessity of the case required. This "charter of compact," as they called it, secured to the people in the territories the full right of self-government at as early a period as possible, and in the mean time no other authority was assumed than so much as might be necessary to keep the peace; and it is very obvious that they were tempted to this last solely by the necessity of the case. There are no restrictions on the settlers in the formation of their Government, and in their subsequent legislation, any further than was necessary to secure to the United States its right of property in the public lands, and to preserve the fidelity of the inhabitants to the confederation. The condition of Virginia's deed of cession made the first imperative; and the feeling of disloyalty to the Union, which had been displayed in some parts of the confederacy, and the still greater fear of it from the character of the only then inhabitants of the western territory, made the last expedient.

I think it pretty evident, from the language they used, that the framers of this charter supposed that their authority to grant it grew out of their ownership of the soil, and their supposed rights to annex conditions to the sale of it in the shape of a compact with the purchasers. The words I have emphasized in the analysis I have made, I think, shows this. Be that as it may, it is seen that no attempt at legislation was made, and that in the charter no restrictions were made, except such as related to the two points I have mentioned. The only

other one—that relating to slavery—was stricken out.

On the 16th of March, 1785, Mr. King renewed the anti-slavery restriction, which had been defeated in 1784; and it was again defeated.

The subject seems not to have been taken up again until 1787, when the ordinance of that year was passed.

That ordinance was itself rather in the nature of a charter than an ordinary law. It was rather the framework, the form, of a government, than an ordinary act of legislation. The language of its enacting clause is different from that usually employed. It is, "Be it ordained," &c.; and, "Be it ordained and declared." And, except in the second section, in which the course of descents is prescribed, and the mode of conveyance established, which they seemed to think had an immediate connection with their authority over the public lands, and in the sixth article, in which slavery is prohibited, nothing is done which partakes of the nature of legislation. It provides for the appointment of a governor, the election of a general assembly, prescribes the qualification of officers and of voters, &c.; and it goes on to "declare" most of the fundamental principles of our Government, very much in the manner of a bill of rights; and it secures the right of self-government, the most important of them. It provides expressly that "the Legislature shall have authority to alter the laws as they shall think fit"—an authority which they freely exercised. But, a short time after the organization of the Territorial Government of Ohio, the Legislature under it altered the provisions of the ordinance in many particulars. I recollect particularly in reference to the course of descents and the mode of conveying property; and they adopted, in the words of the Virginia statute, the laws of England in force prior to the fourth year of James I. Now, it seems very much like absurdity to me, to say that Congress has the power to legislate for the Territories, and at the same time concede that the Territorial Legislatures may repeal laws enacted by it.

The ordinance, on its face, shows that its framers considered that they were organizing "a State," for which the ordinance was to be a temporary constitution until it could substitute one better suited to its wants. In its first section it declares "that the said Territory, for the purposes of a temporary government, be one district—subject, however, to be divided into two districts." Afterwards it says: "The Legislatures of these districts or *new States* shall never interfere in the *primary* disposal of the soil *of the United States.*" Again it says: "And whenever any of the said States shall have sixty thousand *free* inhabitants therein, such *State* shall be admitted, *by its delegates*, into *the Congress* of the United States, on an equal footing with the original States." It is very evident that the Congress considered that they were organizing States—new States, in contradistinction to "the original" thirteen; to the admission of which, "by its delegates, into Congress," the only obstacle seemed to be the want of a requisite population.

In 1787, as in 1784, Congress very evidently distrusted their powers to legislate for the Territories; and hence they attempted to give some show of validity to such portions of it as partook of a legislative character, by styling them "a compact," some sorts of which Congress had a right, by a vote of nine States, to sanction. But concede it to be, in its nature, a compact, and such a one as Congress could enter into, and yet you do not give it validity.

To create a compact, there must be parties able and willing to contract, and who, in fact, do contract. Now, who in this case were the parties? The ordinance declares the parties to be "the original States and the people and States in the said territory." Now, sir, I choose on this point to rest upon the fact rather than the law. Which of the original States ever assented to this compact? Not one! It is true, Virginia was asked to consent to a change which was proposed in the boundary of the States, which it was designed to create in the territory northwest of the Ohio, and the number of them, from the number and boundaries specified in her deed of cession. To this Virginia assented, but she was not asked to assent, and she did not assent, to any other part of the ordinance. There is no pretence that any other State acted in the matter at all. Will it be said that they assented through their delegates in Congress? They had no commission to give any such assent. Besides, "the people and States in the said territory," the other parties, were not represented in Congress, and they never were in any form consulted.

If this ordinance is to be considered a legislative act, it was always null and void; because the Congress of 1787 had no authority to pass it as such. But if it is to be considered a compact, then it was equally void, as the pretended parties to it were not consulted. Well, then, might Mr. Madison speak of it as an act "done without the least color of constitutional authority." In the 38th number of the Federalist, Mr. Madison says, "Congress 'has assumed the administration of this stock, '[referring to the public lands.] They have be-'gun to render it productive. Congress has un-'dertaken to do more: they have proceeded to form 'new States; to erect temporary governments; to 'appoint officers for them; and to prescribe the 'conditions on which the States shall be admitted 'into the Confederacy. *And all this has been done,* '*and done without the least color of constitutional au-*'*thority.*" And, in truth, the sixth article of the ordinance (the one relating to slavery) was always treated as a nullity in the territory itself. At the time of the cession of the territory, it was uninhabited except by a few French and Canadian settlers, who held slaves. And they continued to hold them, notwithstanding the ordinance; and the issue of many of them are held as slaves to this day.

The States formed in the northwestern territory, and the Congress of the United States itself, by their respective legislation, have shown that they regarded it as a nullity.

In the constitutions which those States formed preparatory to their admission into the Union, they prohibited slavery; which was unnecessary, if it was already perpetually excluded by the ordinance, as is now contended.

In Illinois slavery still exists to a small extent, as it has not yet disappeared under the operation of her laws for its gradual abolition; and yet Illinois was within the territory comprehended in the ordinance of 1787.

In the law of Congress of 1793, relative to fugitives from service, this language occurs:

"SECTION 3. *And be it also enacted*, That when a person

held to labor in any of the United States, or in *either of the Territories on the northwest* or south of the Ohio, *under the law thereof*, shall escape into any other of the said States, or Territory, the person to whom such service or labor shall be due," &c.

There was no territory northwest of the Ohio, except that covered by the ordinance of 1787; yet this law of Congress, passed shortly after the adoption of the Constitution and the passage of the ordinance of 1787, recognizes the existence of slavery in it, the ordinance to the contrary notwithstanding.

I think it sufficiently clear, Mr. Chairman, that the sixth article of the ordinance of 1787 never had any validity. But of all the absurd ideas I have ever heard in this hall, the idea that the ordinance is forever beyond the reach of the people of the present States, and in its own language, is to "forever remain unalterable," is, beyond question, the most absurd. It has been said that it is unalterable, because it is a compact. Have I not shown that it never had validity as such? Because, suppose it was otherwise, who ever had authority to bind men and their decendants through all time, as to the form of government and the institutions under which they should live? All governments are compacts, in the sense in which the word "compact" is used here; yet will any one say, in this country, that the people can be restrained in their right to alter and reform their governments and laws whenever, in their opinion, it will be promotive of their prosperity and happiness? If this idea, that this ordinance is forever unalterable, be correct, then the States in the northwest are not completely sovereign, and they do not stand on an equal footing with the original States. And the condition of the Virginia deed of cession that they should be admitted into the Union "having the same rights of sovereignty, freedom, and independence as other States," has been violated. Will the northwestern States admit that such is their condition of inferiority?

After the adoption of the Constitution, in the purer and better days of the Republic, there never was any attempt by Congress to legislate for the territories.

On the 7th May, 1800, the Indiana territory was formed. At that time there was no attempt to control the domestic institutions of the territories; nor on the 10th of the same month, when an act passed authorizing the establishment of a government in the Mississippi territory. On the 26th of March, 1804, the act erecting Louisiana into two territories was passed. In that act, the power was attempted to be exercised in the section prohibiting any others than persons removing to the territory to reside to introduce slaves; but the attention of Congress seems not to have been called to it at the time, for the next session it was repealed.

This act the gentleman from Maine [Mr. SMART] referred to, to sustain him in his claim of the power in Congress to legislate for the territories upon the subject of slavery; but, if the gentleman had gone a little further, he would have found, I think, that the deliberate decision of Congress was against him. Why was the law—in favor of which the sympathies of Congress doubtless were—repealed? Surely, only because its enactment was considered a usurpation. And I do not arrive at this conclusion solely from the character of the transaction itself, but from the testimony of statesmen who were in the public councils at the time.

The gentleman also referred to the clause of the same act prohibiting the importation of slaves *from foreign countries*; and he seemed to think that this was a precedent for the exercise of the power now claimed. And the opinion of Mr. Madison, expressed in 1790, that Congress could prohibit the foreign slave trade in the territories, has been quoted for the same purpose. But the gentleman should recollect that no one has ever questioned the right of Congress after 1808 to prohibit the foreign slave trade; and before that time, many supposed —as it seems Mr. Madison, in 1790, and the Congress of 1804 did—that Congress might prohibit the foreign slave trade in territories which we acquired *subsequent* to the adoption of the Constitution. The language of the Constitution is in these words: "The migration, or the importation, 'of such persons as any of the States *now existing* 'shall think proper to admit, shall not be prohibited by Congress prior to the year 1808."

But it appears that the clause of the act of 1804 under consideration, was not very deliberately considered by Congress; for subsequently, in 1807, under circumstances of the most imposing character, and giving the very highest sanction to their act, Congress modified this law in a most vital particular. The law of 1804 made the negroes, imported contrary to its provisions, free. But the law of 1807 repealed this, and declared that they "should *remain* subject to any regulation which the Legislatures of the several States or Territories might thereafter make." I will show the importance of this proceeding hereafter.

In the law erecting Michigan into a separate territorial government, there was no attempt at territorial legislation; nor was there in the case of Illinois, or of Missouri. In the case of Wisconsin, there was; and the conditions and restrictions of the ordinance of 1787 were recognized. But it was done in general and ambiguous phraseology, which caused it to pass unnoticed. It was not attempted in the case of Iowa; on the contrary, the precedent in the case of Wisconsin was abandoned, and a return made to the former practice of the Government; nor in the bill of the session of 1845, relative to the Oregon Territory, until the sixth article of the ordinance of 1787 was ingrafted on it, upon the motion of the present Speaker, [Mr. WINTHROP.] On the contrary, in most of these acts, which were reported from committees composed of a majority of members from non-slaveholding States, all legislative power, except such as relates to the disposal of the public lands, is recognized as existing in the territorial legislatures. This is most clearly done in the case of Iowa, the provision in reference to which I shall have occasion to quote in another connection. It is true, in most of these acts, there is secured to the inhabitants of the Territories all "the rights, privileges, and immunities," granted and secured by the ordinance of 1787; and I have heard it contended that this recognized the article prohibiting slavery. But it is very clear that this is an erroneous view. The words here used are taken from the Constitution of the United States, where they have a technical and ascertained meaning. In the language of Judge Chase, in the case of Morris vs. Campbell, "privilege and immunity are synon-

'ymous, or nearly so. Privilege signifies peculiar 'advantage, exemption, immunity; immunity 'signifies exemption, privilege." And in the language of Mr. Justice Washington, in the case of Corfield and Coryell, the "rights, privileges, and 'immunities, which are designed to be secured by 'the Constitution, and also by the case in question, 'are the *fundamental* rights and privileges;" such as the right of trial by jury, of habeas corpus, of religious freedom, to acquire and possess property, and many other of the same class, which are provided for in the ordinance.

And from the act relative to Wisconsin itself, it is evident that its framers did not understand the words in question as referring to the article of the ordinance relative to slavery; for in the very same section, after declaring "that the inhabitants of said Territory shall be entitled to all the rights, privileges, and advantages" secured by the ordinance, it is added, "*and shall be subject to all the conditions and restrictions and prohibitions in said articles of compact;*" which words were unnecessary if the construction gentlemen contend for is correct.

But it has been asked, why do most of these laws organizing territorial governments, require that the laws passed by the territorial legislature shall be submitted to Congress, and declare that they shall be null if disapproved? and also, if this does not look like reserving the power of legislation? On the contrary, these provisions but reserve a sort of Congressional veto, which enacts nothing, does nothing affirmatively, but puts it in the power of Congress to arrest legislation, and leave things as they were. The object is evident. It is to enable Congress to arrest territorial legislation relative to the public lands, the exclusive right of legislation in reference to which is reserved to Congress, and in violation of fundamental principles. And it is believed that there is no instance where Congress has interposed, except in cases where the territorial legislatures have attempted to pass laws affecting the public lands, or violating some fundamental principle. The section of the Iowa territorial constitution shows very clearly the object of the reservation. It is in these words:

"SECTION 6. *And be it further enacted*, That the legislative power of the Territory shall extend to all rightful subjects of legislation; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. All the laws of the governor and legislative assembly shall be submitted to, *and if disapproved by the Congress of the United States*, the same shall be null and of no effect."

It will be observed that the sanction of Congress is not required before a law goes into effect; but it requires the disapproval of Congress—it requires affirmative action to arrest it. And here, again, these territorial constitutions are somewhat analogous to our colonial charters. The chief difference is this, which was very great: if the King withheld his assent to an act, it never became operative; but here Congress must do more, and affirmatively disapprove it. And although the power thus reserved to the King was much greater than the power reserved to Congress, it was not considered as partaking of a legislative attribute; for, although the colonists complained of the tyrannical exercise of this power, they never questioned its legality, but they went to war to resist the claim of Parliament to legislate for them in reference to their domestic affairs.

I come now, Mr. Chairman, to the Missouri compromise. I am free to admit, in that, there was an attempt on the part of Congress to adopt fundamental legislation for the territories. But it must be borne in mind, that the strict constructionists never admitted the right of Congress to do so. On the contrary, the South voted against the Missouri compromise. That compromise, as it is improperly called, was forced upon us by the North. And it has been acquiesced in by the South, rather in consequence of the circumstances in which it originated, and as a means of preventing the agitation of an exciting and irritating subject, than because of any validity in the thing itself. Its obligation is rather moral than legal, and we have acquiesced in it as such heretofore, and are willing to do so hereafter.

But gentlemen say, if you are willing to abide by the Missouri compromise, why object to the Oregon bill? The whole of Oregon is north of that line. We reply, if you choose to rest upon the Missouri compromise, we have no objection. If that applies to the subject, this provision is unnecessary; and, therefore, in insisting upon its retention in the bill, you, in effect, repudiate that compromise.

I maintain, further, that if the power of legislating for the people of the Territories resides in Congress, every territorial government we have organized has been done in violation of the Constitution of the United States. All the powers of the General Government are delegated; and no proposition is clearer than that a legislative body cannot delegate its delegated powers. "*Delegatus non delegare.*" I presume there can be no doubt about this. But, in addition to it, the Constitution declares, as we have seen, that "all legislative 'powers herein granted shall be vested in a Con-'gress of the United States, which shall consist of 'a Senate and House of Representatives." It surely will not be maintained that we can transfer any portion of these legislative powers to any other persons; and yet in every territorial government we have authorized, a provision has been introduced conferring upon the territorial legislatures the fullest legislative powers.

Besides, if the powers of the territorial governments emanate from Congress, then all their officers are United States officers, and, under the Constitution, can only be appointed by the President.

The Constitution declares that "all offices of the United States" (with a few exceptions, within which these territorial officers do not come) "shall 'be appointed by the President, by and with the 'advice of the Senate, and commissioned by him." Yet most of the territorial charters we have granted, provide that the governor "shall have power to 'appoint and commission all officers, civil and of 'the militia." So much for the practice of the country in establishing territorial governments.

I desire now to call the attention of the committee to a decision of this whole question, which was made by the two Houses of Congress under circumstances, as it will be seen, which give the decision the highest authority.

At the commencement of the 2d session of the 9th Congress, Mr. Jefferson recommended that,

in anticipation of the period when Congress might abolish the slave trade, a law for that purpose might at once be passed. That portion of the message was referred, in both Houses, to select committees.

On the 15th of December, 1806, Mr. *Early*, from the committee of the House of Representatives to whom was referred that part of the President's message, reported a bill for that purpose.

Section 1st prohibits, from and after the 31st of December, 1807, the importation of any negro, mulatto, or other person of color, with intent to keep, sell, or dispose of such negro, mulatto, or person of color, as a slave.

Section 2d imposes a very heavy fine upon any one who shall be concerned in any way in building or fitting out a vessel to be employed in the slave trade.

Section 3d forfeits all vessels found engaged in the slave trade, and imposes a fine upon the master and owner.

Section 4th declares, that "if any negro," &c., the importation of whom by the act is prohibited, "shall, after the 31st of December, 1807, be found 'within the United States, or the Territories there-'of, every such negro, &c., shall be forfeited;" and it imposes a penalty upon any person concerned in buying or selling such negro, &c.

Sections 5th and 6th prescribe the form of proceedings, &c.

Mr. Sloan moved to amend the 4th section, by inserting after the word "forfeited," "and such person or slave shall be entitled to his freedom."

Upon this amendment a long debate ensued, and it was rejected; only nineteen members rising in its favor.

Mr. Alston said he doubted whether Congress possessed the power of saying that slaves imported into a particular State, whose laws directed them to be sold, should be made free.

Mr. Early remarked, he would ask gentlemen whether the House or the Government of the United States were constitutionally competent to declare what should or should not be property within the several States? They were not competent to this, after the article constituted as property was brought within the limits of the United States.

Mr. Bidwell, of Massachusetts, said it was admitted, that by the forfeiture, slaves would be transferred from the individual owner to the United States, and that they might sell them as property. Might they not, instead of selling, manumit them?

Mr. Early, of Georgia, contended that the slaveholding States would not submit to having large cargoes of Africans, who did not speak their language or understand their institutions, let loose among their slave population.

Mr. J. Clay, of Pennsylvania, opposed the amendment, upon the ground that the repugnance of the southern people would be such to this provision, that there would be no informers; and that if there were, as the laws of most of the southern States prohibited free negroes from remaining within them, this obnoxious population would be thrown upon other States, where free negroes are permitted to reside.

Mr. Sloan said that a further provision might be incorporated in the bill, to send those persons of color that might be imported in contravention of law back to Africa.

Mr. Smilie doubted the propriety of the amendment, but contended that the bill was imperfect without some such provision, and advised that the committee should rise, and the bill be recommitted.

Mr. Quincy thought that such an important principle as that involved in the amendment ought to be settled before the bill was recommitted. He was opposed to doing anything contrary to the safety and true interest of any part of the Union; and believing that this provision would have that effect, he was hostile to it. Besides, he believed there would be little difficulty in defeating it; and he asked, "What was to prevent the Legislature 'of Georgia, after Congress had declared that these 'people should be free, considering them as vaga-'bonds, and selling them for a term of years, or 'for life, to the highest bidder?"

Mr. Macon (Speaker) also spoke against the amendment; and so did *Mr. Cook*.

The vote was then taken, and the amendment was rejected; only 19 members rising in its favor.

An amendment was offered by Mr. Bedinger; and while it was under discussion,

Mr. Ely adverted to the former amendment, and insisted that some such provision was necessary; and asked what would be the effect if the cargo was carried into a State where slavery did not exist? Would the negroes still be sold under the forfeiture, for the benefit of the United States; or would they be manumitted by force of the State law? If the former, he hoped no gentleman would insist upon the enforcement of any such forfeiture in Massachusetts, where such negroes were as likely to be carried as in any other State.

At the same time that the subject was under discussion in the House, it was also under consideration in the Senate. Unfortunately, the debate in that body is not preserved. But a very minute account given of their proceedings, by a gentleman who was a leading member at the time—I allude, to Mr. Giles, of Virginia—and the alterations which were made in the bill in its passage through the Senate and the House, afford us a very clear conception of the considerations which influenced Congress. I have had recourse to the original files of the Senate, and from them I have made out, with some care,

A History of the passage of the Bill abolishing the Slave Trade through that Body.

On the 9th of December, 1806, it was referred to a committee composed of Messrs. Bradley, Stone, Baldwin, Gaillard, and Giles. January 15, 1807, Mr. Bradley reported it with sundry amendments.

The first section of the bill, as originally framed, is in the precise terms of the law as it now stands. So is the second, with the exception, that in the original bill, the words "or foreigner," after the words "United States," in the second line of section 2, as it now stands in Little & Brown's edition of the Laws, were stricken out in the House of Representatives. And so in the 3d section.

The 4th section, as it now stands, is identical with the original bill, with these exceptions: in the original bill, the word "*cargo*" occurred between the words "her" and "tackle," in the 14th line of the section as it now stands in Little & Brown's edition. That word was stricken out, and the words in the next line, "with all the goods and

effects which shall be found on board the same," were added. And the section, from "and," after the word "seized," to "color," at the end of the section, was added. But, as originally proposed by the committee of the Senate, it read in the first part of it, "and neither the importer, *nor claimant*, or persons *purchasing* from under either of them." This was changed so as to make it read as it now does, viz: "And neither the importer, nor any person or persons claiming from or under him." And it contained the word "*unfortunately*" between the words "may be" and "imported;" and it did not contain the word "territories" between the words "which the Legislature of the several States" and the words "at any time hereafter." The first expression was stricken out in the House, and the last one was there inserted as an amendment.

The 5th section as it now stands, differs from the original bill, and as it passed the Senate, only in this: that the offence was changed by the House of Representatives from felony to a high misdemeanor, and the punishment from death to imprisonment.

The 6th section, as originally reported, contained between the words "effects" and "provided," the words "and such purchaser shall, moreover, gain no right, title, or claim to the service or labor of such negro, mulatto, or person of color, by any such purchase whatever." These words were striken out by the Senate. And the proviso, which, as originally reported, read, "Provided, that nothing herein contained shall be construed to affect the disposition any of the Legislatures of the several States may make of any negro, mulatto, or person of color, who unfortunately may be imported or brought, in violation of this law, within these States respectively," was changed to the form in which it now stands.

The 7th section, most of it, which relates to the employment of the navy of the United States, and the whole of it, beginning with the words "and the proceeds," in the 28th line, to the end of the section, was added by the Senate to the bill as originally reported. This latter part provides for delivering over the negroes to the State authorities, and was made necessary by the other amendments.

The 8th section, as originally reported, and as it passed the Senate, did not contain the proviso to that section as it now stands, but it was added by the House of Representatives.

The 9th section, with the exception of a few verbal amendments, and that the size of the vessel referred to was reduced from fifty to forty tons, is the same as it stands in the bill as originally reported, and as it passed the Senate.

The 10th section—the same reduction in the size of the vessel was made; and the bill, as originally reported to the Senate, contained this proviso:

"*Provided*, That nothing contained in this act shall prohibit any captain, master, or commander from employing, as seamen or mariners, negroes, mulattoes, or persons of color, or any person travelling by sea or by land from taking with him his necessary menial servants not exceeding —."

To show to the country at one view precisely what changes were made in the 4th section in its passage through Congress, I will hand to the reporter a copy of that section, with the words which were stricken out by the Senate in *italics*, those added by the Senate in brackets, those added by the House in small capitals, and those stricken out by the House marked with inverted commas:

"SEC. 4. *And be it further enacted*, If any citizen or citizens of the United States, or any person resident within the jurisdiction of the same, shall, from and after the 1st day of January, 1808, take on board, receive, or transport from any of the coasts or kingdoms of Africa, or from any other foreign kingdom, place, or country, any negro, mulatto, or person of color, in any ship or vessel, for the purpose of selling them in any port or place within the jurisdiction of the United States, as slaves, or to be held to service or labor, or shall be in any ways aiding or abetting therein, such citizen, or citizens, or person, shall severally forfeit and pay $5,000; one moiety thereof to the use of any person, or persons, who shall sue for and prosecute the same to effect; and every such ship or vessel, in which such negro, mulatto, or person of color, shall have been taken on board, received, or transported, as aforesaid, her *cargo*, tackle, apparel, and furniture, [and the goods and effects which shall be found on board the same,] shall be forfeited to the United States, and shall be liable to be seized, prosecuted, and condemned in any of the circuit courts or district courts in the district where such ship may be found or seized. [And neither the importer, nor any person or persons, claiming from or under him, shall hold any right or title whatever to any negro, mulatto, or person of color, nor to the service or labor thereof, who may be "unfortunately" imported or brought within the United States or Territories thereof in violation of this law; but the same shall remain subject to any regulations not contravening the provisions of this act, which the Legislatures of the several States OR TERRITORIES at any time hereafter may make for disposing of any such negro, mulatto, or person of color.]"

From these proceedings, it will be seen that the bill, as originally reported to the Senate, and the bill in the House, was precisely similar, and provided that the negroes, as well as the vessel, &c., should be forfeited and sold for the benefit of the United States. But, as Congress did not wish itself to become secondarily engaged in the slave trade, as the British Government has done in her act for suppressing it, and make profits out of the sale of the negroes, the word "cargo" was stricken out. If nothing more had been done, there would have been no legal regulation whatever as to the negroes imported. Therefore, it was necessary that something more should be done. Well, what is it Congress would have been most anxious to do, and doubtless would have done, if it had thought that it had full power over the subject? Beyond all question, to have emancipated the negroes. They showed this disposition two years before, in the law to which the gentleman from Maine referred. But, after great deliberation, Congress decided that it had no jurisdiction over persons in the States or Territories, and that the negroes, as soon as they were landed within the limits of either, became subject exclusively to their legislation. Congress could, before they were brought within the State or territorial jurisdiction, have emancipated them, and sent them back to Africa; but, for reasons which Mr. Giles states, to which I shall refer in a moment, this was considered impracticable. And therefore the Senate added the section, leaving them to such disposition as the States and Territories should make of them. I say States and Territories, because the Senate doubtless meant to include the Territories in the word States. The Territories, at that time, particularly Louisiana and Alabama, were precisely the places where slaves would be most likely taken; and of course the Senate, if it considered it had jurisdiction over the subject, did not mean to leave it without any legislation, as they would have done if they had not considered the Territories as included in the provision relative to the States. They were

doubtless aware that Congress had in its legislation treated the Territories as included in the word States, where it occurs in the several clauses in the Constitution. This they did in the law of 1793, to enforce the second and third paragraphs of the second section of the fourth article of the Constitution; and also in the laws of 20th May, 1790, and of the 27th March, 1804; in each of which Congress construed the word "States" as comprehending Territories. And it would seem they agreed with Chief Justice Marshall, that the "term United States, as used in the Constitution, 'is the name given to our great Republic, which 'is composed of States and Territories." But the House of Representatives did not consider it safe to risk this, and the words "or Territories" were inserted in the connection I have pointed out.

I prefer, said Mr. B., to any comments of my own, to read those of Mr. Giles, of Virginia, who was a distinguished member of the Senate at the time, and a member of the committee which reported the bill.

But, before I do that, the committee will excuse me for calling its attention to an opinion expressed by Congress on the same occasion, which is not directly connected with my argument. It will be seen that Congress refused to say—and considered not doing so a matter of consequence enough to justify an amendment to the bill—that it was unfortunate for the Africans to be brought here as slaves. The advantages which they would reap of becoming civilized and christianized, Congress considered anything but a misfortune to them.

And before I read those comments of Mr. Giles, it is proper that I should briefly refer to the subsequent legislation of Congress: In 1818, Congress reviewed its legislation in reference to the slave trade; and in the act of 20th April of that year, it retained the provision of the act of 1807 relative to the disposition of the negroes: "They were to re-'main subject to the regulations which the legisla-'tures of the several States or Territories may at 'any time heretofore have made, or hereafter may 'make, for disposing of any such negro, mulatto, 'or person of color."

In 1819, the subject again came before Congress; and, in the act of 3d March, 1819, provision was made requiring the President to remove captured Africans without the limits of the United States, and transport them to the coast of Africa. Thus showing, by the unbroken legislation of Congress, that it was considered that the moment negroes were let loose in any of the States or Territories, they became subject exclusively to State and Territorial legislation.

[Mr. B. here sent to the Clerk's table, to be read, the following extract, from the writings of Mr. Giles:]

"When the bill was before the committee of the Senate who framed it, an inquiry took place respecting all the material circumstances attending the African slave trade. Amongst other facts, it was in proof that the slaves were generally crowded in the slave vessels, and the vessels themselves in a filthy condition; from which circumstances, and the coarse and scanty fare furnished, the slaves generally arrived in this country in a sickly condition, and required immediate landing for their relief. These facts induced the committee to abandon all attempts at making provision for their immediate return to Africa in case of capture by American cruisers; which measure would have been preferred, if deemed practicable. Their landing in the United States thus becoming necessary, a question arose under what jurisdiction they would be placed when brought into any port of the United States within the limits of any particular State or Territory? Would they be placed under the jurisdiction of the United States, or under that of the particular State or Territory within whose limits they should be landed? Here, then, the question of jurisdiction, between the United States and the individual State or Territory, as to the condition of persons brought within the limits of any State or Territory, was directly presented for consideration. The writer believes no subject ever presented to Congress demanded or received more investigation and consideration; the result of which was, that the jurisdiction was decided to be exclusively in the individual States and Territories; and the two provisoes to the 4th and 6th sections were prepared with an express view to a legislative interpretation of the Constitution upon that momentous question.

"The following circumstances attending the decision of Congress, contained in the provisions of the 4th and 6th sections of the bill, give the highest possible sanction to the precedent:

"1st. The question of jurisdiction was *directly* and *singly* brought into consideration.

"2d. The question was discussed upon its own intrinsic merits, uninfluenced by any extrinsic considerations whatever. Truth alone was its object, uninfluenced by electioneering, or any other fanatical excitements.

"3d. The question arose from a specific *power granted* by the Constitution to the Federal Government, growing out of the general *power retained* by the States respectively; and the object of the provisoes was to draw the precise boundary line between the *granted* and the *retained* power. The greatest possible attention, therefore, was bestowed upon every word of the two provisoes.

"4th. The discussion was long, considerate, and dispassionate, and eventuated in the conviction of every member of both Houses of Congress that the jurisdiction over persons was with the States respectively. The bill passed unanimously in the Senate, as is believed, the ayes and noes not being taken, and with five dissenting votes in the House of Representatives. Those votes were understood to have been given against the bill, in consequence of other objections.

"The principle contained in these provisoes produced the discussion of the following questions: Has slavery existed from the beginning of the world to this day, as far as authentic accounts of the human race have been recorded? Is slavery recognized and sanctioned by the Constitution of the United States? Is slavery recognized and sanctioned by the Holy Scriptures? Is slavery recognized and sanctioned by international law? Is slavery recognized and enforced by the municipal laws of individual nations, and particularly by the municipal laws of the several States? What coercive acts performed by one or a number of persons upon the body or bodies of others, would have the effect of reducing those others to a state of slavery; or, in other words, to subjection to the will and disposition of the person or persons exercising these coercive acts, according to the municipal

laws of individual nations and the sanctions of international law?

"All these questions were most ably discussed, upon legal, political, and philosophical grounds, and eventuated in the conviction of every one, that, notwithstanding the refined sensibilities of the present times, slavery then was, and always had been, a legal and actual condition of man, as deduced from all the preceding authoritative texts. The clause in the Constitution which authorized the passage of the bill from which the foregoing sections are taken, is in the following words:

"'The migration or importation of such persons as any 'of the States now existing shall think proper to admit, shall 'not be prohibited by the Congress prior to the year eigh-'teen hundred and eight; but a tax or duty may be imposed 'on such importation, not exceeding ten dollars for each 'person.'

"The preceding part of the 4th section, having interdicted the importation of slaves into the United States, concludes as follows:

"'And neither the importer, nor any person or persons 'claiming from or under him, shall hold any right or title 'whatsoever to any negro, mulatto, or person of color, nor 'to the service or labor thereof, who may be imported or 'brought within the United States or Territories thereof, in 'violation of this law; but the same shall REMAIN subject to 'any regulations not contravening the provisions of this act, 'which the *Legislatures* of the several States *or Territories* 'at any time thereafter may make for disposing of any such 'negro, mulatto, or person of color.'

"The first part of this clause goes to declare, that 'neither the importer, &c., shall hold any right 'or title to any negro, &c., who may be imported, 'or brought within the United States or Territories 'thereof in violation of this law.' Here stops the jurisdiction of the United States under the foregoing clause of the Constitution—it does not pretend to exercise any jurisdiction whatever over the person of the negro, &c.; but it then proceeds virtually to disclaim all right to such jurisdiction, and virtually to declare that such jurisdiction is in the *States* and *Territories* within whose limits such negro, &c., may be brought respectively. The words are, 'but 'the same shall REMAIN subject to any regulations 'not contravening the provisions of this act, *which* '*the legislatures of the several States or Territories, at* 'any time hereafter, may make for disposing of any such 'negro, mulatto, or person of color.' This clause contains a virtual disclaimer of jurisdiction on the part of the United States, and a declaration, that 'the same shall REMAIN subject to any regulations 'not contravening the provisions of this act, which '*the legislatures* of the *several States or Territories* 'at any time hereafter *may make*,' &c. Here then it will be seen, that the jurisdiction over persons is declared to be in the *legislatures* of the *Territories* as well as of the States; to be exercised not merely now, but at *any time hereafter*, at their own discretion." (The *italics* in this extract are all Mr. Giles's.)

And in this same connection permit me to say that Mr. Adams, whose death has created such a sensation in the country, was in the Senate at the time, and took an active part in all these proceedings.

It will thus be seen that Congress, under peculiarly imposing circumstances, when everything conspired to produce a just decision, has solemnly settled this whole question. And they decided it with singular unanimity. And I ask gentlemen why they cannot now leave the jurisdiction over persons where the fathers of the Republic have decided it belongs? Why will you permit your fanaticism to carry you so far as to violate the Constitution and every fundamental principle of our Government?

But I regard the Wilmot Proviso as designed to repudiate the Missouri compromise. If that compromise is to operate, it is unnecessary; and gentlemen, in insisting upon it, repudiate the Missouri compromise.

And gentlemen must excuse me for saying that I consider this bad faith upon the part of the non-slaveholding States. They cannot contend now, as they did in the debate last winter, that the Missouri compromise has no application, inasmuch as it only referred to territory which we possessed at the time of its adoption. We did possess this territory then. But I do not admit that the Missouri compromise does not extend to territory which we did not then hold. I admit, in terms, it does not. But was it not equitable, was it not fair, as far as the non-slaveholding States are concerned? It clearly was not, so far as the South was concerned; there was no reciprocity in it. But this is immaterial now. It is not the South that is seeking to discard it. Was it not fair, as far as the North is concerned? The conclusive fact which I have already mentioned, obviates the necessity of any argument. *It was the proposition of the North itself, carried by northern votes against southern votes, and southern protests.* In favor of the Missouri compromise every Senator from the non-slaveholding States, except two, voted; and in the House of Representatives every member from the same States, except five, also voted for it. The North, at least, is estopped from complaining of its inequality. If it was fair and equal, as far as the territory we then possessed was concerned, why will it not be so as far as the territory to be acquired hereafter is concerned? How is it, that in reference to territory hereafter to be acquired, equality is not equity? Upon what principle is it, that territory, won by the common blood and the common treasure of every portion of the Union, is to be appropriated exclusively to aggrandize and augment the power of one? Sir, this Union rests upon the basis of the most perfect equality among all its members; and whenever the government of it is administered for the exclusive advantage of any portion of it, its days will be numbered.

In the case of Texas, the Missouri compromise line was recognized as extending to territory to which it did not in terms apply. But gentlemen say the South voted against applying it to Texas. It is true we did; because, for the reasons I have given, we did not think Congress had the power to do it. But it was proposed by a gentleman from a non-slaveholding State, and it was carried by the Representatives of the non-slaveholding States. We could not vote for it, but we acquiesced. Notwithstanding all this, in less than two years gentlemen who voted to extend the Missouri compromise to Texas, come forward and insist that the Missouri compromise has no application to territory which we did not possess at the time of its adoption. They are estopped by their own votes from taking this ground.

I have thus shown the iniquity and unconstitutionality of this whole proceeding. But the worst of it is, according to gentlemen's own showing, it is a purely gratuitous outrage upon us. Nearly every gentleman who has spoken upon that side of the question admits, that as soon as

these territories are erected into States they may introduce slavery if they choose. Grant this, (and it is too plain a proposition to admit of doubt or discussion,) and where the use of prohibiting slavery in a Territory? If you do not prohibit it, it will never exist in regions unsuited to the black man; and if you do while the Territories are under your pupilage, it will be introduced as soon as they are left to act for themselves wherever slave labor can be used to advantage. Suppose negro slavery existed at this moment in Maine, does any one doubt that it would soon be extirpated by the laws of nature, which are much stronger than the laws of man? Sir, as the statistics show, the negro cannot live and multiply there. Suppose, on the other hand, the white inhabitants of Jamaica were left free to act for themselves, and there was not a negro in the island, does any one doubt that they would introduce slavery? Why, sir, even the British Government itself, after having abolished slavery there, at a great cost, but a short time since, to avert the ruin it has brought upon the planters, is trying to reëstablish it under flimsy disguises. Suppose there was not a slave in Mississippi, does any one doubt that slavery would be introduced at once? If any such an one can be found, I point him to Texas. Slavery had been abolished there; but she no sooner became independent than she reëstablished it. To recur to the Oregon bill.

No one ever expects to see slavery established in Oregon. It is too far north; its productions are not suited to slave labor, and if they were, it would cost more to take a slave there than he would be worth. But so far from this circumstance excusing the effort to prohibit slavery, it only exposes the reprehensible design of it. The effort is to establish a precedent, where it will be inoperative, to be followed in cases where it would produce its effect.

I have confined myself, as the committee will perceive, to the discussion of the question as to the power of Congress, under the Constitution, to prohibit slavery in the Territories. There are other interesting questions which have been mooted of late, which I have purposely avoided debating. They are first, whether, if we acquire territory where slavery does not exist, it will be legalized there by the very act of acquisition? and second, whether the people of the Territories, through their Territorial Legislatures, can prohibit slavery in the event of the first question being decided one way, or legalize it in the event it is decided the other? These questions, however interesting, are not for us to decide. They are strictly judicial questions, and to the courts I am willing, as I shall be bound, to leave them. They are questions which Congress has no authority to settle; and they are questions which I do not wish to see introduced here, or into the politics of the country. Neither the Congress nor the President can have anything to do in their solution. But very different is the character of the principle of the Wilmot proviso. That looks to Congressional action and Executive sanction, and it cannot be lost sight of. No strict constructionist, no Democrat, can be indifferent to the principles which I have shown it violates. I have therefore confined myself to it, and made no allusion to the other questions, any further than they are referred to in the authorities I have quoted.

I have also abstained, by design, from the discussion of the question of slavery in its moral, social, and political aspects. For, although I have very decided opinions upon the subject, I do not think Congress has any jurisdiction over it, either in the States or the Territories; and therefore, as a member of Congress, I have no commission to debate it.

But there is one view of it, which has been presented by the gentleman from Maine, [Mr. Smart,] which I consider germane to the subject, and I therefore ask permission to notice it very briefly. He maintains that the prohibition of slavery in the Territories does not prevent any white man from the slave States emigrating to them; whereas the permission of slavery excludes the white laborers of the non-slaveholding States. Now, sir, I hold that the very reverse of this is true. Prohibit slavery in a Territory, and in what position do you place a slaveholder who desires to emigrate? Before he goes, he must either sell his slaves, or emancipate them. But nineteen out of twenty of southern slaveholders, particularly in the old States, could not adopt the first branch of the alternative, without doing the greatest possible violence to every impulse of their hearts.

To nineteen out of twenty—indeed, I may say ninety-nine in every hundred—of the owners of slaves in those States, nothing is more trying to them than to be compelled to sell them. Most of them have been raised with them on the same plantation; they have enjoyed with them the sports of childhood, and they have a feeling towards them almost fraternal. They feel, as I have always done, a religious duty to watch over and protect them. A master will resent an injury to his slave, as soon as to himself. Very often they do not feel at liberty to transfer the performance of this duty to another, of whose humanity they may know nothing. The consequence is, that slaves are very rarely sold from a calculation of profit. I have never known one thus sold. In the district of country in which I live, I have never known a negro sold, except for insubordination, or other crime, or where the master was compelled to sell in consequence of debt. (Of course, I do not allude to cases of sales made at the request of the slave himself.) And these forced sales are generally the most trying acts of a man's life. Most slaveholders would be unwilling to sell their slaves preparatory to emigration.

The other branch of the alternative would be still worse. Most of us are unwilling to withdraw that protection to which our negroes are entitled by inheritance, and doom them, as emancipation almost always does, to the condition of miserable vagabonds, in which they would cease to be the slave of an individual whose interest and inclination is to protect him, and become the slave of the community with no wish but to degrade and oppress him. Besides, in most of the slave States, his remaining in the place of his nativity after emancipation is prohibited. Can the master take him with him, where still he might act as his friend? The laws of most of the non-slaveholding States prohibit him from taking him there as a free negro; and if Congress has jurisdiction of the subject, the representatives of these States would scarcely force upon a Territory a species of population which their own States exclude. The people of the Territories, I venture to say, would prefer their being carried to them as slaves rather than as free

negroes. What, then, is a slaveholder thus situated to do? You force him to do violence to his feelings, or abstain from emigration. You impose upon him a condition precedent to his enjoying a portion of the common property of the United States, which it is impossible for him to perform.

This is not speculation. How many of the Virginia officers of the Revolution settled upon the lands reserved for them by the State from her magnificent donation to the Union? Scarcely one. The doubt about the validity of the ordinance, and the expectation that Ohio, as soon as she became a State, would abolish slavery, excluded them from their property as effectually as if they had been excluded by a positive law; and they were compelled to sell the finest land in the world for a mere pittance.

I know personally several instances where the descendants of those officers, who made as great sacrifices as men ever made, by the circumstances to which I have alluded, felt themselves and their posterity excluded from lands which their ancestors had purchased by years of such toil and suffering as man rarely ever passed through.

But although many—not all, I admit—of the citizens of the slave States would be excluded by a slavery prohibition in the Territories; yet, in leaving them open, you would not exclude any emigrants from the non-slaveholding States. And if it did, what then would be more proper than to divide the Territories, so that there might be some to which every citizen of every State might remove with his property? There is no restriction upon white emigration in any of the slave States.

But the gentleman from Maine [Mr. SMART] says slavery, wherever it exists, degrades labor, and thus the free white laborers of the North are excluded. I have heard this assertion often made in this House, and it has always surprised me. It shows that want of information upon the subject which is always manifested here in the discussions upon this subject. So far from its being true, the very reverse is the case. So far from slavery degrading the condition of the free white laborer, the very reverse is the case, as the most notorious facts will prove. In a slave State, the distinctions in society do not grow out of the difference of pursuits, but of condition and color. It is not the fact that the negro labors that degrades him; for let him be as idle as he may, even if he be able to live without work, his social position is still beneath that of the poorest white laborer. No white man in the South considers labor degraded because negroes perform it, any more than they do religion, because many of them profess it. In truth, it is the only thing which tends to elevate them; and they are not degraded because they follow an honest pursuit, but in despite of it. I have seen white men and their sons, worth thousands of dollars, working in the same field with their slaves. I have seen many as respectable men as are in my district or anywhere else, working side by side in their fields with slaves they had hired. But they did not feel themselves degraded, nor does anybody consider them so. Go through the State of Virginia, and you will find two-thirds of the strikers in the blacksmiths' shops negroes; but the white blacksmith does not consider himself degraded in consequence. On the contrary, they generally prefer it. They can make him perform menial duties in and about the shop, which they would be reluctant to exact of a white man. There is one species of labor performed by negroes in the southern States, and but one species, which is considered degrading; but it is not so considered in the non-slaveholding States. I mean menial labor. There is not a white man in my district who could be employed at any wages to become a boot-black, or a carriage-driver, or a dining-room servant. I repeat: in the non-slaveholding States, the distinctions in social intercourse grow out of wealth and pursuits; in the slave States, mostly out of color and condition. And I speak from minute personal observation when I say that distinctions in society, growing out of factitious circumstances, is infinitely greater in the non-slaveholding than in the slaveholding States. The respectable white laborers in the South are treated with an infinite deal of more courtesy and respect by men of other pursuits, than they are at the North, and their position in the social state is higher. And the reason is the one I have given.

I have heard it argued, too, that the rights of labor are not likely to be so well protected in a slave State as in a non-slaveholding State; and we have been told, that in the struggle going on between capital and labor for a fair distribution of the profits resulting from their joint capacities, labor is not likely to have as good a chance in a slave State as in a non-slaveholding State. And this has been assigned as a reason for excluding slavery from the new territories. If I have succeeded in showing that Congress has no constitutional power to exclude slavery from the territories, it is immaterial whether this argument be true or false. But is it true? The very reverse is the case; and the reason is as obvious as the fact is notorious. Tell me a single occasion upon which the slave States have been found favoring that system of class legislation which encourages the few at the expense of the many. Tell me of a single occasion, on which they have been found sustaining a system, the tendency of which is to enhance the profits of capital at the expense of the profits of labor. In a slave State there is no struggle, there is no antagonism between capital and labor. They are united in the same hands. The greater part of the capital of the southern planter, as the whole of the capital of the indigent white man, is labor.

The southern capitalist is more interested in the profits of labor than he is in the profits of money or capital in its ordinary acceptation. You cannot impair the profits of labor without injuring the wealthy southern slaveholder. In this respect, the southern planter and the independent northern and western farmer, who cultivates his own land with own labor, differs from nearly all other capitalists. They are interested both in the profits of capital and labor—generally more in the latter than the former; and hence you generally find both these classes opposed to all systems which are calculated to depress labor; and this is the real philosophy of Mr. Jefferson's remark, that the Democracy of the North were the natural allies of the South.

I have thus shown, I think, that Congress has no authority to prohibit slavery in the Territories; that the attempt to do so is a gratuitous effort to violate the Constitution, where, even to attain the object of the movers, it is unnecessary; and that the reasons assigned for doing it are wholly without foundation.