

*Professor Henry
Smithsonian Institution*

TO *P. 1011*

The Congress of the United States,

BY

R. H. WEIGHTMAN,

SENATOR ELECT,

STATE OF NEW MEXICO.

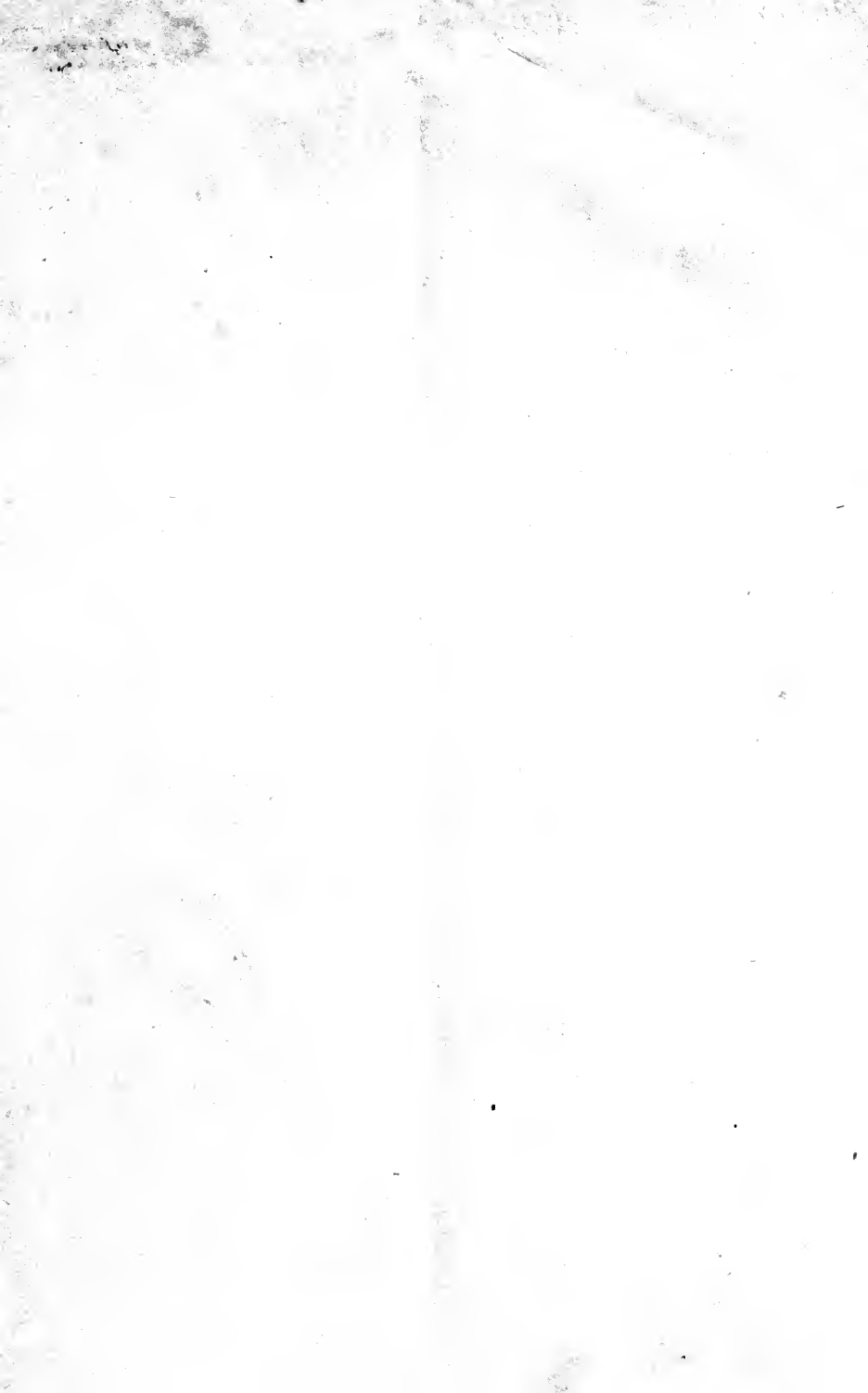
REQUESTING THE PASSAGE OF A BILL DECLARING NEW MEXICO
ONE OF THE UNITED STATES OF AMERICA ON
CERTAIN CONDITIONS.

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*To the Senators and Representatives in Congress assembled, by the undersigned, Senator elect of the State of New Mexico:*

By message of the President of the United States, the constitution adopted by the inhabitants of New Mexico was transmitted to the Senate, September 9th, 1850, on which day it was "read and ordered to lie on the table," and on the following day, September 10th, "ordered to be printed." September 12th, a communication of the undersigned, and the accompanying memorial of the Legislature of New Mexico, the inaugural address and first message of Governor Manuel Alvarez, the memorial of the convention which framed the constitution, and the credentials of the undersigned, were ordered to "lie on the table," and, September 17th, 1850, "ordered to be printed."

This is all the action which has been had on this subject; and it thus appears, that no answer has as yet been given to the respectful appeal of a large and important community to be admitted into the Union of the States, and to the enjoyment of all the blessings of liberty.

Arguments having been presented, in Congress, based on erroneous assumptions, the undersigned will first address himself to the correction of such errors as have fallen under his observation.

It has been asserted that the people of New Mexico were interfered with, and that the plan of bringing New Mexico into the Union as a State originated on the floor of the Senate.

That the people of New Mexico were regardless of Presidential messages, or speeches in either branch of Congress, or letters from distinguished members of either branch of Congress, it is not meant to assert. All these were esteemed good sources of information. And that one set of arguments should prevail, and another be rejected, does not, it is conceived, establish any constitutional objection to the claim of New Mexico to representation in the National legislature. To make valid the objection that the Executive or other branch of government *interfered* in the State movement, it must be shewn that such interference prevented the expression of the popular will, and that the same is not presented in the constitution now before Congress for its consideration. *Mere* interference, if *proven*, makes no valid objection.

Accordingly, in the speech of July 17th, 1850, of a distinguished representative of Virginia, (Mr. Bayly,) the object of which was to "establish" that the admission of New Mexico, when "consummated," "would be one of the grossest outrages, and most flagrant violations of the Constitution, which have ever been perpetrated," the charge is distinctly made, that the constitution now before Congress, was made in Washington city, sent to New Mexico, and there adopted by the dictation of the military commander.

Here is the charge in the language of the distinguished gentleman himself—

“ But before I proceed to establish this, I desire to say a word or two in relation to the course which the party in power has pursued with respect to our Territories. I shall say no more of it in California than is necessary to illustrate my argument concerning New Mexico. \* \* \* \* \*

“ They (the Executive,) saw no other escape than the plan they proposed. They supposed, by the exercise of executive patronage, by the outcry they could raise about the dereliction of duty on the part of Congress in not providing governments for the Territories, and the necessity for them, and, above all, by the sympathy of the north elicited for the provision excluding slavery, that they could carry their scheme through, and thus evade the issue of the Wilmot Proviso. It was well understood in California, and an effort was made to resist it; but the administration proved too strong. \* \* \* \* \*

“ But, sir, as flagitious as these proceedings have been in respect to California, they are propriety itself in comparison with what has been done and proposed in respect to New Mexico. Not only has a military government been continued there without authority of law, but the Executive has recommended to Congress to abstain from organizing a territorial government, and leave the country under military rule until it is ready to apply for admission into the Union as a State. \* \* \* \* \*

“ If these military governments had been continued as governments *de facto*, and merely for the purpose of preserving good order, and under instructions not to interfere with civil affairs, so as to change the *status* of them, I should have been the last to complain. The necessity of the case would have excused it. But they have greatly gone beyond this. Those military officers have actively participated in civil affairs, and exercised sovereign functions. They have undertaken to convene conventions of the people to frame constitutions, to district the territories, and to fix the qualification of voters. While we, the representatives of the people, are engaged upon the very subject of the government of our Territories, it is snatched from our hands by an officer of the army, acting under the instructions of the Executive! The gordian knot, which we are exhausting our ingenuity to untie, is suddenly cut by the sword of a lieutenant-colonel of the army! In the better days of the Republic, what, sir, would have been said of such transactions as these. Under such auspices a constitution has been formed in New Mexico, and is at this moment in this city. It would be a useless consumption of time to undertake to describe its character. The influences which stamped the character of the constitution of California have operated in New Mexico; and we are told that, during this Congress, New Mexico is to be admitted as a State into this Union. Such a proceeding is so violative of every principle of propriety, and of the constitution of the United States, that I desire to expose it at once in all of its deformity.” \* \* \* \* \*

“ After quoting from a speech of Mr. Webster, delivered in the Senate in March, 1848, as follows:

“ AND I CAN TELL YOU, SIR, THAT WHEN WE HAVE MADE IT A TERRITORY, AND WISH TO MAKE IT A STATE, SUCH A CONSTITUTION AS THE EXECUTIVE POWER OF THIS GOVERNMENT THINKS FIT TO SEND TO THEM WILL BE SENT AND ADOPTED. THE CONSTITUTION OF OUR FELLOW-CITIZENS OF NEW MEXICO WILL BE FRAMED IN THE CITY OF WASHINGTON.”

Mr. Bayly proceeds:

“ How prophetic these remarks! How precisely has the result fulfilled the prediction! Such a people have no notion of free government. As Mr. Webster predicted, their constitution has been framed in the city of Washington; and they have adopted just such a constitution as the Executive saw fit to send them.

“ New Mexico will not be in a condition to come into this Union in twenty years, if she ever will be.”

To the charge here presented I join issue. I deny in whole and in detail. In regard to so much of the charge as asserts that the constitution of New Mexico now before Congress, or that any constitution for New Mexico, was made in Washington city, it is respectfully suggested to the distinguished representative of Virginia, that a call on the Executive to furnish the document would put the point at rest forever. I demand of him the proofs; upon him is the *onus probandi*; and until

Mr. Bayly shall produce some testimony more satisfactory than what he is pleased to call a prophecy of any gentleman, however distinguished and honored, coupled with his own exclamation, "How prophetic these remarks!" I solemnly protest against any importance being attached to his charge, particularly when that charge is in direct contradiction of the message of the illustrious and lamented Taylor, of Jan'y 21, 1850, in answer to an elaborate call, by a branch of Congress, for information on this very subject of executive interference in the political affairs of California and New Mexico.

Without waiting, however, for proofs which Mr. Bayly will be unable to produce, I proceed to give a short history of the origin, progress, and consummation of the State movement in New Mexico.

With the first number of the "New Mexican," issued November 28th, 1849, began the *public* discussion of the advantages of a State government. Through the columns of the same paper, December 8th, 1849, sixteen *civilians*—some of Mexican, and others of American blood; some whigs, and others democrats; some southern, and others northern born—issued an "Address to the people of New Mexico," urging the formation of a State government. In this address it was argued that a State government was best *per se*; that, as a State, we could best resist the encroachments of Texas; and that a territorial government, appearing impossible of attainment, a State government must be sought to rid ourselves of the anti-republican and badly administered military despotism, under which we suffered.

In the fourth number of the "New Mexican" appeared the counter-address, contesting all these positions, urging that a State government was more expensive than a Territorial one, and the taxation necessary to support it greater than the people could bear; that the compact with Texas, and the treaty stipulations with Mexico, and the right of appeal to the Supreme Court of the United States, amply protected us against Texan encroachments, and that a territorial government could be obtained. The State movement was denounced as a *factious movement*, and the signers of the first address denominated the *Alvarez faction*. To this counter-address were appended the names of sixty-two persons, among which were those of all, or nearly all, the prominent office-holders under the military government. The secretary of the Territory, the judges of the circuit courts, the prefectos, the alcaldes, the sheriffs, clerks of courts, the governor's interpreter, &c.; all of whom held their offices at the absolute will and pleasure of the military commander. Besides the names of these were appended those of the sutlers for the troops, and employees of the quartermaster, and contractors with Government for the supply of beef, mules, flour, &c.

Into the discussion was brought Executive messages, Congressional speeches, editorials of leading newspapers, letters of distinguished members of either branch of Congress, or from private sources. Information from every quarter was sought for and discussed—nothing was discarded as unworthy of *examination*. By the advocates of a Territorial government a letter of Senator Foote, to a private individual, was much relied

on. Senator Foote, in his letter, advised a territorial government, and silence on the slavery question as the most easy mode to obtain a government; but that if a State government was sought, in that case also, to be silent concerning slavery.

A letter of Mr. Bedinger, of Virginia, recommending opposition to the State movement, because the movement, if consummated, would relieve the administration of General Taylor of a difficulty in the slavery question, was also commented on.

The State movement, despite the official influence which had been brought to bear against it, and despite the taunts of its opponents, steadily advanced in public estimation, until the office-holders themselves, yielding with what of grace they might, to the belief that a Territorial government could not be obtained, came into the movement, and attempted to place themselves at the head of it.

It was at this period when the entire population of New Mexico was in favor of the State movement, that Colonel Munroe issued his proclamation for the reasons therein set forth:

#### *Proclamation.*

Whereas, the people of New Mexico have, by public meetings, held in the several counties of this territory, expressed a desire to hold a convention for the formation of a State constitution, and to urge upon Congress the admission of this territory into the Union as a State: Therefore, I, John Munroe, civil and military governor of said territory, do hereby direct; that the qualified electors of the territory of New Mexico shall assemble at the precincts of their respective counties; on Monday, the 6th day of May next, between the rising and the setting of the sun, to vote by ballot for delegates to a convention to be held at Santa Fé, on Wednesday, the 15th of May next, as follows:

For the county of Taos, three delegates.

- |     |                              |
|-----|------------------------------|
| Do. | Rio Arriba, three delegates. |
| Do. | Santa Fé, three delegates.   |
| Do. | San Miguel, three delegates. |
| Do. | Santa Ana, two delegates.    |
| Do. | Bernalillo, two delegates.   |
| Do. | Valencia, five delegates.    |

The prefects shall designate convenient precincts in their respective counties, and shall appoint three discreet persons as judges of election in the several precincts; otherwise said elections shall be conducted in manner and form as prescribed in the laws of the Territory, under the title of "Elections," except that the prefect's clerk of each county shall, with the assistance of the prefect, examine and cast up the votes given to each candidate; shall give a certificate of election to the person having the highest number of votes, and shall transmit to the secretary of the Territory a fair abstract of all the votes given, within four days after the day of election.



Given under my hand, at the Government house, in the city of Santa Fé, this 23d day of April, A. D. 1850.

JOHN MUNROE,  
*Military and Civil Governor Territory N. M.*

The *object* for which this proclamation was issued, met with the unqualified approbation of the entire population.

The short notice given of the day of election; the throwing the entire control of the election, including the designation of precincts, appointment of judges, counting the votes, and making returns into the hands of the prefects and their clerks, who, in the election held under that proclamation, were themselves, one or the other, candidates in every county, did *not* meet the approbation of the State party. It however went into the election, but owing to the advantages we have mentioned, the office holders elected a majority of the convention. This convention framed the constitution now before Congress. Section 10 of the schedule to which is in these words:

“ 10. The military and civil governor of the Territory shall be requested, immediately after the adjournment of this convention, to issue writs of election to the prefects of the several counties, requiring them to cause an election to be held on the twentieth day of June, 1850; the electors to vote for or against this constitution; for a governor and lieutenant governor, a representative in the Congress of the United States, senators and representatives to the legislature; and the returns of such election shall be made to the prefects, who, together with the prefects' clerks, shall count the votes given, and certificates of election shall be given by them to such persons as shall have received the highest number of votes for members of the legislature. The prefects of the several counties shall make correct returns, under their hands, of all the votes given in their respective counties for governor and lieutenant governor, and representative to Congress, and votes for and against this constitution, to the present secretary of the Territory, at Santa Fé, who, when the legislature shall convene, shall lay such returns before them on the first day of their session, so soon as both houses shall be organized, and the speaker of the house of representatives, and the president *pro tempore* of the Senate shall, in the presence of both houses, examine the returns, and declare who are elected to fill those offices, and the votes for and against this constitution. If any two or more persons shall have an equal and higher number of votes than any other person or persons, the legislature shall determine the election in the manner hereinbefore provided.”

May 28th, Colonel Munroe issued his proclamation, as follows:

#### PROCLAMATION.

Whereas, the people of New Mexico, by their delegates in convention assembled, did, on the 25th day of May, frame a State constitution for the Territory of New Mexico, and request the present civil and military governor of this Territory to issue a proclamation for elections, for the purpose of submitting the same to the people, and for the purpose of electing such officers as are provided to be so elected in said constitution:

Therefore, I, John Munroe, civil and military governor of the Territory of New Mexico, do hereby direct that the qualified electors shall assemble at the precincts of their respective counties on Thursday the 20th day of June next, between the rising and setting of the sun, to vote on a separate ballot *for or against* the constitution as framed by the convention, the same to be deposited in a separate box; and on another separate ballot, to be deposited in a separate box, for governor, lieutenant governor, representatives to Congress, and for senators and representatives to a State legislature to convene at the capital on Monday the first day of July next. It being provided and understood that the election of all officers in this election can only be valid by the adoption of the constitution by the people, and otherwise null and void; and that all action of the governor, lieutenant governor, and of the legislature shall remain inoperative until New Mexico be admitted as a State under said constitution, except such acts as may be necessary for the primary steps of organization, and the presentation of said constitution properly before the Congress of the United States.

The present government shall remain in full force until by the action of Congress another shall be substituted.

The election shall be conducted in manner and form as prescribed in the statute laws now in force in this Territory, except that the prefects are hereby directed forthwith upon the receipt of this proclamation to divide their respective counties into convenient election precincts, and to appoint three discreet persons in each precinct as judges of election, who shall appoint two clerks of their respective precincts.

The prefects, with the assistance of the prefects' clerks, shall, within six days after the election, count up all the votes in the returns of the several precincts of their counties, and shall immediately issue certificates of election under their hands to the persons having the highest number of votes for representatives to the State legislature.

They shall also make a fair abstract of the returns from the several precincts of their respective counties of all the votes for and against the constitution, for governor, lieutenant governor, representatives to Congress, and State senators, and despatch the same immediately, certified under their hands, to the secretary of the Territory, who shall issue certificates of election to the persons having the highest number of votes for members of the State senate, and shall lay such returns before the two houses of the legislature upon the first day of their session and immediately upon their being organized.

The number of representatives and senators for the respective counties and districts for the State legislature shall be the same as prescribed for the Territorial legislature in the statute laws of this Territory now in force.

When any county officer, whose duty it may be to sum up or make returns of votes or certificates of election, shall be a candidate for any office, the senior alcalde of such county shall be required to aid in counting up said votes, and shall, in place of such officer being a candidate, sign all certificates of elections as hereinbefore prescribed.

Given under my hand, at the government house, city of Santa Fe, this 28th day of May, A. D. 1850.

JOHN MUNROE,  
*Civil and Military Governor Territory of New Mexico.*

It will be perceived that in issuing this last proclamation Colonel Munroe, though in terms basing its making on the action of the convention, exceeded the authority conferred upon him by that body. His proviso, that the State government, except for certain purposes, should remain inactive until New Mexico should be admitted by Congress as a State, was a clear exercise of authority not conferred, and indeed directly repugnant to section 7 of the schedule to the constitution, which limits the tenure of the Territorial officers "*until they shall be superseded under this constitution of the State of New Mexico.*"

The proviso not having been based on authority conferred by the delegates of the people in convention, except by the office-holders and their adherents, who were loud in *their* commendations, was not respected by the people.

The tendency of this proviso was to intimidate the people by holding over them officers who, supported by the military commander, had invaded their dearest rights.

We quote from the memorial of the legislature of New Mexico :

"The inhabitants of New Mexico, since February 2, 1848, have groaned under a harsh law forced upon them in time of war, when they were thought unworthy of confidence.

"The military is independent of, and superior to, the civil power.

"The inhabitants have no voice or influence in making the laws by which they are governed.

"Some power other than the Congress of the United States has made judges dependant on its will alone for the tenure of their offices, and the amount and payment of their salaries.

"Some power other than the Congress of the United States has subjected us to a jurisdiction foreign to the Constitution and unacknowledged by our laws.

"We are taxed without our consent, and the taxes, when collected, are not appropriated for the public benefit, but embezzled by officers irresponsible to the people.

"No officer in New Mexico is responsible to the people. Judges unlearned in the law decide upon life, liberty, and property. Prefectos and alcaldes impose fines and incarcerate without the intervention of a jury.

"Alcaldes assail the right of the people freely to exercise their religion without restriction, and dictate to congregations what priest shall administer the sacraments of the Church."

The control of the elections was again in the hands of the office-holders ; but, despite all adverse circumstances, the people triumphed, defeating the office-holders in every county but one, and this without taking into consideration majorities in favor of the former, known to exceed in the aggregate one thousand, which had been suppressed by the prefectos and their clerks.

Mr. Manuel Alvarez, having been elected by the people lieutenant governor, was installed July 4, 1850, and, in the absence of the governor elect, he on that day entered on the duties of governor ; the chief of the *faction*, as it had been denominated by the office-holders under the military commander, thus becoming the chief of the State. To the able correspondence of this gentleman, with Colonel Munroe, I respectfully make reference, as indicative of the *attitude of antagonism between the choice of the people and the military commander.*

The whole number of votes against the constitution was *thirty-nine*, included in which number is any *per se* pro-slavery party which may exist in New Mexico. I say *per se* pro-slavery party, for there was a fraction of the State party in favor of the insertion of a pro-slavery clause in the constitution, *SOLELY as a measure of policy, to facilitate the admission of New Mexico into the Union WITH California.* Another fraction of the same party was in favor of the policy of Senator Foote—silence—and *this, too, as a measure of policy only.*

If there were any individuals in New Mexico who supposed that *any* constitutional provision on the subject of slavery would bring about the introduction of slave labor there, they must be included among those who voted against the constitution. That there was any *party* that advocated, or hoped for, the introduction of slave labor in New Mexico, I utterly deny. Of this, however, there can be no manner of doubt, that the constitution now before Congress was ratified by a popular vote of six thousand seven hundred und seventy-one, *thirty-nine individuals only voting against it*; and this was the vote by a people who, by their

course in the recent election, have demonstrated that they are the reverse of tame submissionists to the dictation of power.

Servility has never been a vice of the people of New Mexico ; indeed, when a State of the Mexican confederacy, she exhibited a tendency to that too-wide liberty of nullification ; and now, while having abandoned such crudities and become law-abiding and conservative, she has lost no portion of her ancient independence.

The detail above presented is in many of its parts painful to me to narrate. I desire to inflict no injury on the good repute of Colonel Munroe, who is a veteran officer twice brevetted for his services in the war with Mexico. I deem it due to this gentleman to state that *throughout* he expressed his desire to be neutral between parties, and to lay down his functions as governor, as soon as he could do so, consistently with (what he believed to be) his duty.

His motives I intend not to assail ; but that his peculiar ideas of duty have brought about most strange results, it is my privilege and duty to assert.

Mr. Bayly, in his speech heretofore alluded to, has quoted from a speech of Mr. Webster's, of 1848, who certainly has given no flattering account of the people of New Mexico. Mr. Webster's remarks are based on the cited authority of Mr. Ruxton, an English traveller and writer of books.

I cannot but express surprise that a book of the character of this of Mr. Ruxton's, should be made the basis of a determination on the part of Mr. Bayly to keep New Mexico out of the Union "*for twenty years, perhaps for ever*"—or, indeed, that it should find any place as an *authority*, in a debate involving the political liberty of a community of more than 80,000 souls.\*

Without drawing any comparison in regard to our respective constituencies, which might disturb the complacent sensations of the representative of Accomac, or without reproducing the calumnies of Mr. Ruxton, I merely say that if this writer is good authority for one fact, he should be esteemed good for all. With this view I commend to Mr. Bayly Mr. Ruxton's views on the origin and progress of the Mexican war, marked A in the appendix. I commend him to Mr. Ruxton on the slavery question, page 299. Mr. Ruxton's account of *his rubbing down a wild buffalo*, page 286, might not be uninteresting.

I assert that while it is evident, from his book itself, that Mr. Ruxton is not reliable as a recorder of facts, it is also evident that *his object in disparaging the Mexican, is to depreciate the American character*, and of this a few extracts will be conclusive.

Page 190. "The inhabitants are worthy of their city," (Santa Fe) "and a more miserable, vicious-looking population it would be impossible to imagine. Neither was the town improved, at the time of my visit," (December, '46) "by the addition to the population of some three thousand Americans, the dirtiest, rowdiest crew I have seen collected together. Crowds of drunken volunteers filled the streets, brawling and boasting, but never fighting."

*These were the Missouri volunteers of Doniphan, Price, Clark, &c.*

Page 303. "The town" (St. Louis) "was full of returned volunteers from the wars. The twelvemonth's campaign they had been engaged in, and the brilliant victories achiev-

\* See B, in the appendix.

ed by them, which, according to the American newspapers, are unparalleled in the annals of the world's history, have converted these rowdy and vermin covered veterans into perfect heroes; and every batch, on arriving, is feasted by the public, addresses are offered to them, the officers presented with swords and snuff-boxes, and honors of all kinds lavished upon them in every direction. The intense glorifications at St. Louis, and in every other part of the United States, on the recent successes of their troops over the miserable Mexicans, which were so absurd as to cause a broad grin on the face of an unexcited neutral, make me recur to the subject of this war, which hitherto I have avoided mentioning in the body of this little narrative."

"It is scarcely necessary to trace the causes of the war at present raging between the two Republics of North America. The fable of the wolf and the lamb drinking at the same stream may be quoted, to explain to the world the reason why the *soi-disant* champion of liberty has quarrelled with its sister State for "muddying the water, which the model Republic uses to quench its thirst." (See A, of appendix.)

Siege of Vera Cruz, by Ruxton, page 25. "The town still presents numerous souvenirs of the bombardment by the warlike De Joinville, in 1839. The church towers are riddled with shot, and the destructive effects of shells are still visible in the heaps of ruins which have been left untouched. Since my visit it has also felt the force of American ire, and withstood a fierce bombardment for several days, with what object it is impossible to divine, since a couple of thousand men might have at any time taken it by assault. The castle was not attacked, and was concluded in the capitulation without being asked for—*cosa de Mexico*. The town was attacked by the American troops, under General Scott, within ten months after my visit. It suffered a bombardment, as is well known, of several days, an unnecessary act of cruelty in my opinion, since, to my knowledge, there were no defences around the city which could not have been carried, including the city itself, by a couple of battalions of Missouri volunteers. I certainly left Vera Cruz under the impression that it was not a fortified place, with the exception of the paltry wall I have mentioned, which, if my memory serves me, was not even loop-holed for musketry. However, temporary defences might have been thrown up in the interval between my visit and the Americans' attack; still I can but think that the bombardment was cruel and unnecessary. The castle could have been carried by a frigate's boarders, having but seven hundred naked Indians to defend it."

What a mortification to the people of the U. S. to discover that their General-in-chief, whom they in their ignorance had supposed the greatest military genius of the age, is a **HUMBUG**; for this must be the conclusion if Mr. Ruxton is to be the historian.

Pages 178—9. "The American can never be made a soldier; his constitution will not bear the restraint of discipline, neither will his very mistaken notions about liberty allow him to subject himself to its necessary control. \* \* \* \* \*

No people know better the advantages of discipline than do the officers of the regular service; and it is greatly to their credit that they can keep the standing army in the state it is. As it is mostly composed of foreigners—Germans, English, and Irish, and deserters from the British army—they might be brought to as perfect a state of discipline as any of the armies of Europe; but, &c., &c."

What a fortunate circumstance that our army in Mexico was "mostly composed of foreigners—Germans, English, Irish, and deserters from the British army"!!!

Before proceeding farther to show to what wretched shifts even acute minds must resort, when engaged in making the worse appear the better cause, I quote *entire* one of the arguments of Mr. Bayly.

"There are other provisions of the Constitution which must be violated before New Mexico can be brought into this Union as a State."

"The Constitution declares that no person shall be a representative who shall not have attained the age of twenty-five, nor senator who shall not have attained the age of thirty, and been in case of a representative, seven years, and in case of a senator nine years, a citizen of the United States, and who shall not, when elected, be an inhabitant of the State in which he shall be chosen. Now, sir, how is this requisition of the Constitution to be complied with? How many persons are there in New Mexico qualified for representatives and senators? I see my friend from New York, (Mr. Duer) smiles. He doubtless

recollects that this objection was urged in the case of the admission of Texas, and probably that I answered it on this floor."

"But I will show him they are not analogous. There were in Texas, at the time of her admission, at least one hundred thousand native American citizens. It was true they had expatriated themselves, and were at that time citizens of Texas. I showed, however, by the law of nations, as recognised by our courts, that the moment they were brought again under our jurisdiction, they became restored to their original rights and privileges. They became at once, in the language of our jurists, *redintegrate* citizens. But there are not one thousand American citizens in New Mexico. The most authentic accounts do not make the number greater than five hundred, and no account makes them more than twelve hundred. For the argument, let us suppose that there are that number; nearly one half of them are females; more than half the remainder are under the ages of twenty-five and thirty, so that the range within which to select a representative and two senators, would be confined, (supposing there are twelve hundred Americans there,) to about three hundred persons. The truth is, it would be confined within narrower limits.

"Of the sort of people of whom this number is composed, this House is pretty well informed. It is certain they are not such as would be likely to be elected senators and representatives in the old States, or they would not be in New Mexico.

"Will any body seriously contend that to give a representative and two senators to such a number of persons would not be an outrage on the spirit of our institutions? Will any body say that such a people should have in the Senate an equal vote with New York, Virginia, and the other States, in deciding upon the great interests of this nation?"

Mr. Duer smiled!—of course he did. What does Mr. Bayly mean? It is evident that his objection is not that New Mexico cannot send senators and representatives legally qualified by citizenship of nine and seven years, for he admits there are in New Mexico three hundred *Native Americans* over the ages of twenty-five and thirty from whom to choose. If he means they are of that "sort" which will fall below the *Congressional intellectual standard*, this I must admit is *lamentable*, but I respectfully submit, *not unconstitutional*; and if *his* argument is to be received as the *measure* of the standard, Mr. Bayly may safely lay aside his uneasiness that New Mexico will not be able to come up to it.

Does Mr. Bayly mean that only *Native Americans* are entitled to representation? But there is his argument, and any body may make of it what he can.

To a portion of the audience I am addressing, no argument need be directed. Their votes conforming to their theory, they surely will not force upon an unwilling people a Territorial government. I allude to those who believe that upon Congress has not been conferred the constitutional power to erect temporary governments for the Territories in any case whatsoever; and that, heretofore, in erecting such temporary governments, Congress has acted without the least color of constitutional authority. The speech of the distinguished Senator from Michigan, (Mr. Cass) delivered January 21 and 22, 1850, is fresh in the recollection of Congress, and I therefore make no extracts from it.

If in erecting territorial governments, with the intent of affording protection to a community, desiring this aid, Congress overleaps constitutional restraints, and assumes powers not conferred, surely, to force upon an unwilling people a government not of their choice, is an exercise of power not conferred, which can neither be justified, nor excused.

New Mexico, since 1848, has repeatedly appealed to Congress to give her a territorial government and, until within a few months, her re-

peated appeals have been met by repeated neglect. By the presentation of her constitution she has withdrawn her application for a territorial government, and expressed a desire to govern herself; to be admitted into the Union with all her political rights perfected; to take her station as a sovereign State. Her right to be admitted as a State of the Union, I believe to be clear, and in accordance with established precedents, and this I will proceed to show.

I hold that while Congress should exercise no power not conferred by the Constitution, it is bound to exercise those conferred, whenever such exercise is necessary to give effect to existing rights.

When the treaty-making power has concluded a treaty with a foreign State, and thereby brought into existence rights, it is the bounden duty of Congress, by proper legislation, to make effective those rights.

The treaty of Gaudaloupe Hidalgo furnishes an illustration of this principle. By that treaty the faith of the United States was pledged to prevent the incursions of Indians, resident within our limits, into the republic of Mexico; and already is Mexico, through her minister, demanding of our Government that it carry out this provision of the treaty; and the demand of the minister has been transmitted by the President to Congress, that the necessary law may be passed to make effective this right of Mexico.

The passage of the laws of 1793 and 1850, commonly known as the fugitive slave laws, may be considered Congressional *adjudications*, indicative of acquiescence in the principle stated; that it is the bounden duty of Congress to exercise powers conferred, whenever such exercise is necessary to give effect to existing right.

The right of representation, "*the inestimable right of representation*," acknowledged on all hands, and from the beginning of our independent existence, it is the bounden duty of Congress to make effective by such legislation as is permitted by the Constitution; and it has been the *invariable* practice of Congress, whenever the number of souls composing a community, not a State, approaches the ratio of representation, to make effective the right of representation, by admitting such community as a State of the Union with a republican constitution.

By the omission of Congress to legislate so as to give effect to existing rights, as flagrant violations of the Constitution, may be consummated, as by the exercise of powers not conferred; and this position I do not deem it necessary farther to illustrate.

I hold that the admission of a new State is a compact between the General Government and the new State; and in the absence of any general law prescribing the mode of proceeding, it is unimportant which takes the initiative, whether Congress first by law authorizes the community to frame a constitution, and thus holds out to it an invitation to become a State; or the community, without such preliminary law, frames a constitution, and by transmitting it to Congress makes the proposition to be admitted.

States have been admitted either way. Tennessee, Arkansas, Michigan, and California, all took the initiative and without preliminary

laws, framed constitutions and transmitted them to Congress; *and they are all now States of the Union.*

In no one instance, where the new State has taken the initiative, has Congress required it to undo this work, and begin *de novo*, with its permission.

The admission of the States of Tennessee, Arkansas, Michigan and California, taken in connexion with the admission of those States which framed constitutions, after preliminary laws of Congress authorizing the same, may be considered the congressional *adjudication* of the principle last above stated.

The attitude in which Michigan came before Congress for admission is almost identical with the present one of New Mexico. I place in parallel columns the different points:

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|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1. The people of Michigan, without preliminary law of Congress authorizing it, met by their delegates in convention, and framed a State constitution, which was subsequently ratified by popular vote.</p>                                                             | <p>1. The people of New Mexico, without preliminary law of Congress authorizing it, met, by their delegates in convention, and framed a State constitution, which was subsequently ratified by popular vote.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <p>2. After the ratification of the constitution by the people, and before the same had been accepted by Congress, the State government of Michigan was set in motion, displacing the Territorial government authorized by Congress.</p>                                  | <p>2. After the ratification of the constitution by the people, and before the same had been accepted by Congress, the State government of New Mexico was <i>partially</i> set in motion. Its action was impeded by the military commander, Col. Monroe. The State government there, postponing its action from an unwillingness, even in appearance, to seem hostile to the Government and people of the United States, asserting; however, the right of the people, <i>in the absence of Congressional legislation</i>, to make for themselves such provisional government, not inconsistent with the laws and Constitution of the United States, as to them seemed best, and denying the right of any officer of the army to interfere in the matter. (See correspondence of Gov. Alvarez with Col. Monroe.)</p> |
| <p>3. Within the boundaries of Michigan, set forth in her constitution, was included territory claimed by the State of Ohio.</p>                                                                                                                                          | <p>3. Within the boundaries of New Mexico, set forth in her constitution, was included territory claimed by the State of Texas.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <p>4. Congress having settled the disputed boundary between Ohio and Michigan, declared the latter a State of the Union, on condition that the people of that State, by a convention held for that purpose, should acquiesce in the boundaries indicated by Congress.</p> | <p>4. Congress having settled the disputed boundary between Texas and New Mexico<br/>* * * * *</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

Here the parallel ceases.

Up to the point of admission as a State, the difference which exists in the attitudes of Michigan and New Mexico, is clearly in favor of the latter.

The State government of Michigan, after ratification, and *before acceptance* of the constitution, was put in motion, *displacing the territorial government authorized by Congress*, a kind of government which,



until the speech of the distinguished Senator from Michigan, was very generally conceded to be *de jure*.

In their memorial to Congress the legislature of New Mexico thus shows the attitude of New Mexico:

"The Congress, because of disturbing causes, having failed to make needful rules and regulations for the territory of New Mexico, its inhabitants, encouraged by the President of the United States, and driven by necessity, have formed and ratified a constitution, elected a governor, vice governor, and members of the legislature.

"The legislature is now engaged, in the absence of Congressional legislation, in making laws suited to the wants of the people, and consistent with the Constitution of the United States.

"In putting in operation the form of government set forth in the constitution, they believe they have done no act inconsistent with a proper respect to the Government of the United States. The form of government adopted by the people of New Mexico is set up in opposition to no government recognised by Congress, or known to the Constitution and laws, but simply takes the place, under circumstances of urgent necessity, of an unacknowledged government, which has utterly failed to protect the inhabitants of New Mexico in their dearest rights, or to preserve the plighted faith of the Government of the United States."

Respecting this difference, who can doubt that the course of New Mexico was the more moderate, the more conservative, the more law-abiding?

Admitting that Congress has the power to erect temporary governments for the territories, surely the act of Michigan, in ousting the government authorized by Congress, was an usurpation; yet Michigan was admitted as a State.

Will not Congress, by refusing to admit New Mexico as a State, legislate for the encouragement of usurpation and the punishment of moderation?

The spirit of moderation, forbearance, and conservatism, exhibited by the people of New Mexico, since the treaty of Gaudaloupe Hidalgo, is deserving the commendation of every good citizen of this Republic, and might be imitated with advantage by other portions of the country but little blessed with those virtues.

Though harassed by officials, under a military despotism, as set forth in the memorial of the legislature, and threatened with the bayonets of the United States if they attempted to disturb that unauthorized government, though filled with indignation, they have preferred yet a little longer to suffer, rather than *appear* in the eyes of indiscriminating persons to be unfriendly to the institutions or people of the United States.

Upon the arrival in New Mexico of the commissioner of Texas, in public meetings gotten up by the judges, attorneys, contractors, and the like, the spirit of mob-violence was invoked by those functionaries, who attempted to organize a system of insult and violence against the *person* of the Texan commissioner.

The object of the mission of this gentleman was utterly repugnant to the people of New Mexico; yet they becomingly rebuked the violent course which the authorities were disposed to pursue; and this gentleman, during his stay in New Mexico, met with no insult or want of

hospitality, though the object of his mission was altogether odious to the people.

Had the violent views of the authorities not been restrained by the sound public opinion of the people of New Mexico, collision and bloodshed would doubtless have taken place between Texas and New Mexico; and, we believe, it is no rash assumption, that in the then excited state of the public mind in the United States, the most direful consequences would have resulted.

From the debates and proceedings on the admission of Michigan and Arkansas, we make the following extracts:

Senate, December 10th, 1835. The message of President Jackson, in reference to the admission of Michigan, was received.

January 26th, 1836. The memorial of the legislature of Michigan, on the subject of her admission into the Union, having been presented, Mr. *Hendricks* moved that it be laid on the table.

Mr. *King*, of Alabama, suggested giving the memorial the same direction that had been given to a memorial, having reference to the admission of Michigan, in the other House.

Mr. *Hendricks* withdrew his motion to lay on the table, and submitted a motion, as follows:

“Ordered, That the memorial, purporting to be from the senate and house of representatives of the State of Michigan, be referred to the select committee, appointed Dec. 22, in relation to the admission of Michigan into the Union, and that the Senate regard the same in no other light than as the voluntary act of individuals.”

Mr. *Niles* said that, aside from matters of form, he was disposed to regard the petition as coming from the people of Michigan, claiming political rights of the highest magnitude, and he could not refuse to hear them; and, last of all, a memorial coming from a whole people claiming admission into the Federal Union. Have they not a right to select their own mode of application? *They come here not asking a matter of favor, but a matter of right.* Had they not a right to select their own committee to represent those rights? For his part, he was disposed to hear them. If there ever was a people who claimed rights of a high character, *it was those who had political rights and were not represented.*

March 30th—Mr. *Buchanan*. The first objection he should consider was the one suggested rather than insisted on by the Senator from Delaware; and that was, that no act had been passed by Congress for the purpose of enabling the people of Michigan to form a State constitution, in obedience to what had been supposed to be the custom in regard to other States that had been admitted into the Union. Now, was there, he would ask, any reason for passing such an act? Was it required by principle, or was it required by practice? He utterly denied that it was required either by the one or the other, before a new State may be admitted into the Union; and whether it was, given previously or subsequently to the application of a State for admission into the Union, was of no earthly importance. He admitted that the passage of such an act, previously to the admission of a new State was the best course to adopt; but if a people had formed a republican constitution, and if Congress should think they had assumed proper boundaries, was there any objection to their admission, whether the preliminary law had been passed or otherwise? But in the history of this Government there had been precedents to sanction this bill, and they had one which applied expressly to this very case; it being utterly impossible to distinguish between the two, unless in favor of Michigan. He referred to the case of Tennessee, found in 2d volume Laws of the United States. The preamble  
\* \* \* \* \*  
Yet without the previous assent of Congress, Tennessee formed her constitution, knocked at the door of Congress for admission, and, being a welcome stranger, was cordially admitted. He would then ask gentlemen to mete out the same measure of justice and liberality to Michigan which was meted out to Tennessee. *Ought they to be offended with the eagerness of new States for admission into all the rights, privileges, and benefits of the Union, at a time, too, when some of the old States were threatening to leave it?*

April 1st—Mr. *Benton*. \* \* \* \* \* Mr. B. then entered into an ample vindication of the right of the people of Michigan and Arkansas to meet in convention, without a preliminary law of Congress, adopt constitutions, and send them here for examination. \* \* \* \* \*  
*He said that Congress could not reject a constitution, except in the single case of which it was the guaranty—that of its republican character.*

April 2d. The bill was passed in the following form :

“ A bill to establish the northern boundary line of the State of Ohio, and to provide for the admission of the State of Michigan into the Union, upon the conditions therein expressed.”

“ Be it enacted, &c., That the northern boundary of the State of Ohio shall be established at, &c., &c.

Sec. 2. And be it further enacted, That the constitution and State government, which the people of Michigan have formed for themselves, be, and the same is hereby, accepted, ratified, and confirmed; and that the said State of Michigan shall be, and is hereby declared to be, one of the United States of America, and is hereby admitted into the Union on an equal footing with the original States, in all respects whatsoever: *Provided* always, and this admission is upon the express condition that the said State shall consist of, and have jurisdiction over, all territory included within the following boundaries, and over none other, to wit: beginning, &c., &c.

Sec. 3. And be it further enacted, That as a compliance with the fundamental condition of admission, contained in the last preceding section of this act, the boundaries of the said State of Michigan, as in that section described, declared and established, shall receive the assent of a convention of delegates, elected by the people of the said State for the sole purpose of giving the assent herein required; and as soon as the assent herein required shall be given, the President of the United States shall announce the same by proclamation, and thereupon, and without any further proceeding on the part of Congress, the admission of the said State into the Union, as one of the United States of America, on an equal footing with the original States in all respects whatsoever, shall be considered as complete, and the Senators and Representatives who have been elected by the said State as its representatives in the Congress of the United States, shall be entitled to take their seats in the Senate and House of Representatives respectively, without further delay.

Sec. 4. (Refers to the public lands.)

#### DEBATE ON THE ADMISSION OF ARKANSAS.

April 4th, 1836. Mr. *Buchanan* asked for the yeas and nays on the passage of the bill for admission of *Arkansas*, and they were accordingly ordered.

Mr. *Morris*, of Ohio, said, before I record my vote in favor of the passage of the bill under consideration, I must ask the indulgence of the Senate for a moment, while I offer a few of the reasons which govern me in the vote I shall give. *Being one of the Representatives of a free State, and believing slavery to be wrong in principle and mischievous in practice*, I wish to be clearly understood on the subject, both here and by those I have the honor to represent. I have objections to the constitution of *Arkansas*, on the ground that slavery is recognised in that constitution, and settled and established as a fundamental principle in her government. *I object to the existence of this principle forming a part of the organic law in any State; and I would vote against the admission of Arkansas as a member of this Union, if I believed I had the power to do so.* The wrong, in a moral sense, with which I view slavery, would be sufficient for me to do this, did I not consider my political obligations, and the duty as a member of this body I owe to the Constitution under which I now act, clearly require of me the vote I shall give. I hold that any portion of American citizens, who may reside on a portion of the territory of the United States, whenever their numbers shall amount to that which would entitle them to a representation in the House of Representatives in Congress, have the *right* to provide for themselves a constitution and State government, and to be admitted into the Union whenever they shall so apply; and they are not bound to wait the action of Congress in the first instance, except there is some compact or agreement requiring them to do so. I place this right on the broad, and, I consider, indisputable ground, that all persons living within the jurisdiction of the United States are entitled to equal privileges, and it ought to be matter of high gratification to us here, that in every portion, even the most remote of our country, our people are anxious to obtain this high privilege at as early a day as possible. *It furnishes clear proof that the Union is highly esteemed, and has its foundations deep in the hearts of our fellow-citizens.*

By the Constitution of the United States power is given to Congress to admit new States into the Union. It is in the character as a State that any portion of our citizens, inhabiting any part of the territory of the United States, must apply to be admitted into the Union; a State government and constitution must first be formed. It is not necessary for the power of Congress, and I doubt whether Congress has such power, to prescribe the mode by which the people shall form a State constitution; and for this plain reason, that Congress would be entirely incompetent to the exercise of any coercive power to carry into effect the mode they might prescribe. I cannot, therefore, vote against the admission of *Arkansas* into the Union, on the ground that there was no previous act of Congress to

authorize the holding of her convention. As a member of Congress, I will not look beyond the constitution that has been presented. I have no right to presume it was formed by incompetent persons, or that it does not fully express the opinion and wishes of the people of that country.

It is true that the United States shall guaranty to every State a republican form of government; meaning, in my judgment, that Congress shall not permit any power to establish in any State a government without the assent of the people of such State; and it will not be amiss, if we remember, that the guaranty is to the State, and not as to the formation of the government by the people of the State; but should it be admitted that Congress can look into the constitution of a State, in order to ascertain its character, before such State is admitted into the Union, yet I contend that Congress cannot object to it for want of republican form, if it contains the great principle that all power is inherent in the people, and that the Government draws all its just powers from the governed.

The people of the Territory of Arkansas having formed for themselves a State government, having presented their constitution for admission into the Union, and that constitution being republican in its form, and believing that the people who prepared and sent this constitution are sufficiently numerous to entitle them to a representation in Congress; and believing, also, that Congress has no right or power to regulate the system of police these people have established for themselves, and the ordinance of 1787 not operating on them, nor have they entered into any agreement with the United States that slavery should not be admitted in their State, *have the right to choose this lot for themselves*—though I regret they have made this choice; *yet believing that this Government has no right to interfere with the question of slavery in any of the States, or prescribe what shall or shall not be considered property in the different States, or by what tenure property of any kind shall be holden, but that all these are questions of State policy, I cannot, as a member of this body, refuse my vote to admit this State into the Union, because her constitution recognises the right and existence of slavery.*

This, to my mind, is conclusive on this subject, and I did believe there was not any just ground for the objections urged against the admission of Michigan, nor can I now believe that those against the admission of Arkansas ought to prevail, either because there has been no previous act of Congress to authorize her people to form a constitution, as has been urged by one Senator; or because her constitution admits slavery, as has been urged by another.

Under every view which I have been able to take on these important questions, the application of both Michigan and Arkansas for admission into the Union is not prohibited by any provision of the Constitution of the United States, and that Congress has not the power to enter into any compromise, bargain, or agreement, with the people of these States, in order to procure a change, amendment, or alteration of their constitutions; nor has Congress the power to make any such requirement, or to effect such change; but that each State has the right to present herself for admission, in her own time and manner, and that justice and sound policy require the admission of both the States that now seek it."

On the final passage of the bill admitting Arkansas, the vote stood as follows :

*Yeas*—Messrs. Benton, Brown, Buchanan, Calhoun, Clayton, Cuthbert, Ewing of Illinois, Ewing of Ohio, Grundy, Hendricks, Hill, Hubbard, King of Alabama, King of Georgia, Linn, McKean, Mangum, Moore, Morris, Nicholas, Niles, Preston, Rives, Robinson, Ruggles, Shepley, Tallmadge, Tipton, Walker, White, Wright—31.

*Nays*—Messrs. Clay, Knight, Porter, Prentiss, Robbins, Swift—6.

*Michigan*, December 23, 1836. Mr. BENTON: The subject has been already 4 or 5 years before Congress; it is a mere question of right—a right which had existed 4 years ago, but which, &c.

January 2d, 1837. Mr. GRUNDY: Of one point he was fully satisfied; that Michigan had a right to be received into the Union; on this he presumed there would be but little difference of opinion; the chief difference having respect to the mode in which it was to be done, &c.

Mr. CALHOUN: Some time previous to the last session of Congress, the Territory of Michigan, through its legislature, authorized the people to meet in convention for the purpose of forming a State government. They met accordingly, and agreed upon a constitution which they forthwith transmitted to Congress; it was fully discussed in this chamber, and objectionable as the instrument was, an act was finally passed which accepted the Constitution and declared Michigan to be a State, and admitted into the Union on the single condition that she should, by a convention of the people, assent to the boundaries prescribed by the act. Soon after the adjournment the legislature of the State of Michi-

gan, (for she had been raised by our own act to the dignity of a State,) called a convention of the people of the State, in conformity to the act, which met at Ann Harbor. After full discussion the convention withheld its assent, and formally transmitted the result to the President of the United States. This is the first part of the story. I will now give the sequel. Since then, during the last month, a self-constituted assembly met, professedly as a convention of the people of the State, but without the authority of the State. This unauthorized and lawless assemblage assume the high function of giving the assent of the State of Michigan to the condition of admission as prescribed in the act of Congress, &c. \*

It will be asked—what shall be done? Will you refuse to admit Michigan into the Union? I answer *no*—I desire to admit her; and if the Senators from Indiana and Ohio will agree, *I am now ready to admit her, as she stood at the beginning of last session*, without giving sanction to the unauthorized assemblage of December, &c.

Mr. DANA: A long and severe contest had existed between Michigan and Ohio in regard to their boundary line, each claiming the same territory, and each ready to defend it with their lives. Michigan claimed admission into the Union, but Congress could not admit her, standing as she did in a hostile attitude with one of the States of the Union, until the existing question of boundary was settled. \* \* \* \* \* A single thought more and I have done. It is not denied that Michigan embraces a population which entitles her to a rank among her sister States; that she has formed a republican constitution, and organized her government under it, and that Congress have approved it. She has also given her assent to the terms prescribed, and now presents herself for admission into the Union, and for her legitimate rank as an independent sovereign State. Her claim is not without precedent, but has frequently been conceded to others. Now, let me ask what is the *duty* of Congress? *Have we a right to deny her this privilege*; should we continue to debar her from year to year of rights and privileges to which she is entitled, and which she demands at our hands? Sir, *a solemn duty devolves upon us*, and I trust we shall best discharge it by immediately admitting this State into the Union.

Mr. Walker concluded by observing that in his opinion to delay longer the admission of Michigan would be an act of the clearest injustice, and a violation of the spirit of the Constitution and of the ordinance of 1787.

January 3, 1837. Mr. BUCHANAN: It has been the practice heretofore to treat our infant Territories with paternal care, to nurse them with kindness, and when they have attained the age of manhood to admit them into the family without requiring of them a rigid adherence to forms. The great questions to be decided are, do they contain a sufficient population? Have they adopted a republican Constitution? And are they willing to enter the Union on the terms which we propose? If so, all the preliminary proceedings have been considered but *mere forms, which we have waived in repeated instances*. They are but the scaffolding of the building which is of no farther use after the building, is erected. We have pursued this course in regard to Tennessee, to Arkansas, and even to Michigan.

On the final passage of the bill for the admission of Michigan, the vote stood as follows:

*Yeas*—Benton, Brown, Buchanan, Dana, Fulton, Grundy, Hendricks, Hubbard, King of Alabama, King of Georgia, Linn, Nicholas, Niles, Page, Parker, Rives, Robinson, Sevier, Strange, Tallmadge, Tipton, Walker, Wall, White, Wright—25.

*Nays*—Bayard, Calhoun, Clay, Crittenden, Davis, Kent, Moore, Prentiss, Southard, Swift—10.

Messrs. Calhoun, Crittenden, Moore, and Southard voting *nay because* of the preamble; Messrs. Bayard and Davis, because such had been the action of Congress, that the question should be referred to the people of Michigan for their acquiescence.

From these debates I deduce as follows:

1. That a people having sufficient population, properly presenting themselves to Congress, have the *right* to be admitted as a State, and the corresponding obligation or duty rests upon Congress to make effective the right; and that to withhold it is a violation of the spirit of the Constitution of the United States.

2. That there being no law of Congress regulating the mode of proceeding in the admission of new States, it is unimportant if a preliminary law of Congress authorizing the formation of a State constitution *has not or has been passed*.

3. That the practice and object of Congress heretofore has been, as soon as practicable, to admit new States, *disregarding matters of form*, and looking only at the number of souls and the constitution presented, in order to determine its republican character.

4. That the fact appearing in the constitution presented, that *the government draws all its just powers from the governed*, establishes its republican character.

5. That this government has no right to interfere with the question of slavery in the States, or determine what shall or shall not be considered property, or by what tenure property of any kind shall be holden : but that all these are solely questions of State policy, *in which Congress has no right to intervene*.

6. That Congress has not the power to enter into any compromise, bargain, or agreement with the people of the States, in order to *procure a change, amendment, or alteration* of their constitutions; nor has Congress the power to make *any such requirement, or to effect such change*; but that each State has the right to present herself for admission *in her own time and manner*.

All these questions are discussed in the debates from which I have quoted; and by the passage of the bills of admission, Congress adjudicated them. Notwithstanding this, are we yet adrift; and are all these questions to be re-determined? Does adjudication, after full discussion, settle nothing? And is each question, whether adjudicated or not, an open question?

On this subject we direct attention to the views of Mr. Senator Badger, whose "well balanced mind" has been a subject of comment in the Senate.

In the debate in the Senate, April, 1848, on the subject of authorizing John Charles Frémont, and others named, to act as commissioners in California for certain purposes, this distinguished Senator, after commenting on the difference between "offices" and "employments," spoke as follows :

"And inasmuch as the establishment of a contrary doctrine would involve great difficulties on the Government, I should feel content, even if *the past history and practice of the Government* did not furnish *precedents* to give to this term the signification which I have now stated in its connexion with the bill before us. *But this point has been already decided*; and sensible, for my part, *of the great importance of regarding the Constitution as the same in all times and places, I believe that in all cases in which questions have been decided they should be regarded as settled at once and for ever*. Gentlemen may differ, however, in this view of the subject, though it seems to me that in a question of this kind it is absolutely indispensable, unless we would fetter ourselves at every step of our progress, that we should yield to what has been the clear and undoubted authority of all the departments of this Government—legislative, executive, and judicial. Let me now refer to a few cases, &c. [Congress, Globe, 1st session 30th Congress, page 628.]"

This ought, I think, to be conclusive on this point; but should it not be, I make no doubt that the Senator from North Carolina can further enforce and illustrate *his* position.

If the adherence to forms, not established by precedent, existing not in any constitutional or legislative enactment, but solely in the imaginations of individuals, is obligatory on Congress, how can it be accounted

for that Tennessee, Arkansas, Michigan, and California are now States of the Union, notwithstanding no preliminary law of Congress was passed authorizing them to form constitutions? If it is indispensably necessary that, before becoming a State, a community must first pass through the territorial form, as has been contended by some, how is it that Texas and California are now States of the Union?

The *grand precedent* established by Congress is, that as soon as a community, residing on land gathered under the protecting wings of the Constitution, has of population a near approximation to the ratio of representation, it is matter of high gratification to Congress, matter of obligation or duty for Congress, to make effective the right of representation by admitting the community as a State of the Union, whenever it desires to be so admitted, and presents a republican constitution; and that to withhold the passage of a bill of admission, these conditions being complied with, is violative of the spirit of the Constitution.

The principle of non-intervention, and others advanced in the debates on the admission of Arkansas and Michigan, has since been thus set forth by Mr. Calhoun in his celebrated resolutions of 1847, laying down what has been termed *the southern platform*:

“That it is a fundamental principle in our political creed that a people, in forming a constitution, have the unconditional right to form and adopt the government which they may think best calculated to secure their liberty, prosperity, and happiness; and that, in conformity thereto, no other condition is imposed by the Federal Constitution on a State, in order to be admitted into this Union, except that its constitution shall be republican; and that the imposition of any other by Congress would not only be in violation of the Constitution, but in direct conflict with the principle on which our political system rests.”

In his speech supporting his resolutions, Mr. Calhoun used this language:

“Sir, I hold it to be a fundamental principle in our political system, that the people have the right to establish what government they may think proper for themselves; that every State, about to become a member of this Union, has a right to form its own government *as it pleases*; and in order to be admitted there is but one qualification, and that is, that the government shall be republican.”

It has *pleased* New Mexico to engraft in her constitution an anti-slavery clause. Is it the object of those who oppose her admission now, by so doing, to effect a change in her constitution in this respect? Is this opposition intended “*to procure a change, amendment, or alteration*” in the constitution of New Mexico? Such hope I believe to be vain; and could it be effected would be valueless. In my humble judgment *no* constitutional provision will bring about the introduction of slave labor in New Mexico, for the simple reason *that it will not pay*.

The principle, that while Congress should exercise no powers not conferred, it is bound to exercise those conferred whenever such exercise is necessary to give effect to existing rights; and that of non-intervention in the local legislation of the States, both affirmed in the resolutions Mr. Calhoun, *were also included in the PEACE MEASURES* of the last session; to sustain which, distinguished men of either party or section, abandoning all other considerations, hastened to the rescue of the Union, and standing together, shoulder to shoulder, drove back the threatening waves, which rising on the confines of the Re-

public, and gathering violence as they approached the Capitol, threatened to engulf the Union.

The profound calm now pervading the public mind indicates the acquiescence of the PEOPLE of the United States in the measures of the last session, *and in the principles involved in them.*

Who will now oppose the principles to which I have alluded? Will the South, which has heretofore sustained them, in some cases, with frantic vehemence? Will the South, by voting against the admission of New Mexico, furnish such an illustration of human inconsistency? Will the South, by voting against the admission of New Mexico, *themselves repeal* principles they have heretofore deemed essential to their very safety?

New Mexico seeks admission into the *Union as a whole*. She comes here appealing to no section. She desires admission by a national and not a sectional vote, and she appeals to the nation.

New Mexico in time, and that too a short time, *must* be admitted as a State. *She must be admitted*; but God forbid that it must be by a sectional vote.

Eloquent lips have declared that the strongest bonds of the Union are in the affections of the people. To this I cordially subscribe. To preserve the affections of the people there must be maintained the principle of non-intervention, and all national legislation must be with scrupulous regard to the rights of all. Every act of unjust legislation tends to alienate the affections of the people. Every withholding of constitutional right tends to alienate the affections of the people.

The right of New Mexico to representation in some mode was perfect on the conclusion of the treaty with Mexico, and by the settlement of the disputed boundary question with Texas, her right to representation, as a separate and independent people, became clear and undisputed.

Clear and undisputed as is this "inestimable right," its exercise is withheld. It can only be made operative by the passage of a bill admitting New Mexico as one of the United States of America.

Application to be admitted into the Union, in the language of Mr. Morris, "*furnishes clear proofs that the Union is highly esteemed and has its foundation deep in the hearts of our fellow citizens.*" Such is the attitude of New Mexico.

The appeal of Mr. Buchanan to Senators, "*ought they to be offended with the eagerness of new States for admission into all the rights, privileges, and benefits of the Union, at a time too when some of the old States are threatening to leave it?*" is not without applicability now, when there are misguided persons lying in wait for an unguarded moment to sunder the bonds of the Union.

I have already declared, that one of the arguments used by the State party in New Mexico was, *that a territorial government could not be obtained*; and I would be wanting in frankness did I fail to mention that this argument was much insisted on.

A doubt, therefore, exists whether, now that Congress has provided



a territorial government, the people of New Mexico still desire admission as a State.

Under these circumstances, and with a view of leaving the decision of this question, where it properly belongs, *with the people of New Mexico*, the undersigned respectfully requests of Congress the passage of a bill admitting New Mexico as a State of the Union, *provided the people* of that community, by a convention elected by them for that sole purpose, *acquiesce in the boundaries Congress must now necessarily alter, and express their desire now to be admitted as a State.*

This proposition, based upon the precedent established in the case of Michigan, if carried out, will clear up any doubts which may still exist, that the constitution now before Congress does not express, in all its parts, the wishes of the people of New Mexico; it will also be a condemnation of the new theories that *Native Americans only* are entitled to rights and privileges, and that the colonial system of England can legally be engrafted on our free institutions; it will furnish to the people of New Mexico the evidence that Congress does not look upon them as aliens, but as citizens of the United States, whose rights and privileges will be eliminated by the application of the same rules and principles used in determining the rights and privileges of other communities protected by the Constitution; and that their rights, being thus determined, will be unhesitatingly acknowledged.

In the determination of what are the rights of New Mexico, as a citizen of the United States, and as a citizen of New Mexico, I deprecate the application of new and invidious rules unknown to the theory of our Government. I *protest* against it. I deprecate and protest, because such a course must, by its injustice, excite among the people of New Mexico well-grounded apprehension and distrust.

Against the introduction into the investigation of what are the rights of New Mexico, of the new theory of *the balance of power* between the pro-slavery and anti-slavery States, or between the cis-montane and trans-montane States, or any other check or balance unknown to the Constitution, and not of republican origin, I most solemnly protest.

By the Constitution and its system of checks and balances, and by none other, should we be tried.

There is a large portion of patriotic citizens of the United States, who are in favor of the farther extension of the limits of this Republic by peaceful and legal means, looking upon our country as the ark into which the wearied of despotism may securely take refuge, whether they come as individual emigrants or *independent nations*.

Is this great object to be advanced, if our first act towards a community not native American is, by the application of new theories, to deprive it of rights and privileges heretofore, under similar circumstances, invariably acknowledged, where native American communities were concerned? Will such a course, for instance, advance the peaceful acquisition of the Canadas or of Cuba?

Proclaiming that communities, not native American, must not expect to be considered sovereign, or to be represented in the national le-

gislature, but that their position will be that of colonial dependencies, and the acknowledgment of their rights dependent upon the absolute pleasure and discretion of Congress, unrestrained by considerations of justice or law—that in their cases, rights and privileges are not inherent in the people, but concessions or boons of the government.—How can we hope to advance the cause of human liberty?—*Or how can we say that it is co-extensive with the area overshadowed by our own Constitution?*

To force the blessings of liberty upon an unwilling people is almost in terms an absurdity. If the area of liberty is to be extended, it must be by presenting the spectacle of a just government making effective the rights of all, and scrupulously abstaining from all interference in the local legislation of its parts.

As boldly and as freely as the rightful claims of New Mexico have been denounced, I denounce the withholding the acknowledgment of those claims, as a flagrant outrage on my section, as an endorsement of the principles of the Native American party, as a first step in engrafting on our free institutions the colonial system of England, and as a *sarcasm on the national sympathy for struggling Hungary.*

In presenting the claims of New Mexico to the consideration of Congress, it has been my object to present them in a manner consistent with the respect which it must be the earnest desire of every American to accord to that distinguished body; I trust, also, I have done so with the frankness becoming a citizen of the United States, and the representative of a community, which, of right, ought to be, a free and sovereign State.

**R. H. WEIGHTMAN,**  
*Senator elect, State of New Mexico.*

## APPENDIX.

### A.

"The intense glorifications at St. Louis, and in every part of the United States, on the recent successes of their troops over the miserable Mexicans, which were so absurd as to cause a broad grin on the face of an unexcited neutral, make me recur to the subject of this war, which hitherto I have avoided mentioning in the body of this little narrative.

"It is scarcely necessary to trace the causes of the war at present raging between the two Republics of North America. The fable of the wolf and the lamb drinking at the same spring may be quoted, to explain to the world the reason why the soi-disant champion of liberty has quarrelled with its sister State for 'muddying the water' which the model Republic uses to quench its thirst.

"A lesson has been read to the citizens of the United States which ought to open their eyes to the palpable dishonesty of their Government, their unblushing selfishness, and total disregard to the interests of their country, when those of themselves or of their party are at stake; and although, in the present instance, President Polk has overreached himself, and raised a storm which he would be only too glad to lay at any cost, yet, in the whole history of the Mexican war, the violence of party and political feeling is evident, from the 9th of May, 1846, when the first shot was fired at Palo Alto, to the date of the last half-score despatches which inform the world that General Scott 'still remained at Puebla,' waiting re-inforcements.

"It is enough to observe that the immediate cause of hostilities was the unjustifiable invasion of Mexican territory by the army of the United States, to take possession of a tract of country of which the boundary line had been disputed between the Mexican Government and one of its revolted States, and which had been annexed to the American Union before its recognition as an independent State by the country from which it had seceded.

"There can be no question but that the United States had deep cause of complaint against Mexico, in the total disregard evinced by the latter to the spirit of international treaties, and the injuries inflicted upon the persons and property of American citizens; all redress of which grievances was either totally refused, or procrastinated until the parties gave up every hope of ultimate compensation. The acquisition of Texas, however, was in any case a balancing injustice, and should have wiped out all old grievances, at least those of a pecuniary nature; while, if a proper spirit of conciliation had been evinced on the part of the Americans, at the period when the question of annexation was being mooted, all danger of a rupture would have been removed; and Mexico would have yielded her claims to Texas with a better grace, if taken as a receipt in full for all obligations, than in suffering a large portion of her territory to be torn from her, against all laws held sacred by civilized nations.

"It is certain that such consequences, as have resulted from the advance of the American troops from the Nueces to the Rio Grande, were never anticipated by the President of the United States, whose policy in bringing on a quasi crisis of the State affairs on the Mexican frontier, and provoking the Mexicans to overt acts which could at any moment be converted into a casus belli, was not for the sake of territorial aggrandizement, but for a purpose which, it is known to those in the secret of his policy, had an object more remote, and infinitely more important, than a rupture with the Mexican Government.

"At that time the position taken up by Mr. Polk and his party with regard to the Oregon question involved, as a natural consequence, the probability of a war with England; nay, more, if such position were persisted in, the certainty of a war with that power. That a majority of the people, and all the right thinking and influential classes, were opposed to such measures as would hazard or produce such a rupture, was so palpable, that the Government was conscious that any proposal for making preparations for a war with England, which they knew a perseverance in their policy would assuredly bring about, would not be favorably received, or even tolerated, and therefore they looked about them for means of attaining their object, by blinding the eyes of the people as to their ulterior designs. Mexico was made the scape-goat. A war with that weak and powerless State would be popular, since its duration, it was supposed, could be but for a very brief period,

the Government having no resources whatever, and being sadly deficient in any of the sinews of war; and, moreover, such a war would be likely to flatter the national pride and conceit of the American people.

"To bring, therefore, affairs to such a critical position on the Texan frontier, that a 'state of war' could at any moment be assumed, and its imminence be actually very apparent, was the stroke of policy by which Polk and his party hoped to blind the people, and, profiting by it, make such preparations as would enable them to carry out their plans in connexion with the Oregon question and the probable war with England. They thought that, even if hostilities broke out with Mexico, that power would at once succumb; and, in the mean time, that the war fever in the United States would spread, and that the people would sanction an increase in the army and navy in such a case, which would at any time be made available for another purpose.

"The first shot fired on the Rio Grande changed their views. Until then the Americans were in utter ignorance of the state of Mexico and the Mexicans. They never anticipated such resistance as they have met with; but, judging, from the moral and physical inferiority of the people, at once concluded that all they had to do was *venire, videre, et vincere*. Children in the art of war, they imagined that personal bravery and physical strength were the only requisites for a military people; and that, possessing these qualities in as great a degree as the Mexicans were deficient in them, the operations in Mexico would amount to nothing more arduous than a promenade through the table lands of Anahuac—the 'Halls of Montezuma,' in which it was the popular belief that they were destined, to revel, being the goal of their military *paseo* of six weeks.

"As soon, however, as the list of killed and wounded on the fields of Palo Alto and Resaca de la Palma reached Washington, President Polk saw at once the error into which he had fallen. It became evident to him that all the resources of the country would be required to carry on the war with one of the most feeble powers in the world, and that the sooner he pulled his foot out of the hot water, which at the temperature of 54° 40' was likely to scald him, the better for him and his country; for it naturally occurred to him that, if such a *scrimmage* as the Mexican war gave him considerable trouble, an affair with such a respectable enemy as England was likely to prove any thing but an agreeable pastime: and hence the very speedy acceptance of Lord Aberdeen's ultimatum, and the sudden settlement of the Oregon question."

## B.

By an "extract from the records in the State Department at Santa Fé," recorded page 61 of Senate doc. No. 23, of 1st sess. of 30th Cong., being a "report of the Secretary of War, communicating in answer to a resolution of the Senate, a report and map of the examination of New Mexico, made by Lieutenant J. W. Abert, of the 'Topographical Corps,'" it appears that the population of New Mexico, "according to the statistics presented for this purpose, is 100,064."

This includes the Pueblo Indians, who number all told, as appears by records in Department of Interior, 11,180, leaving a population *exclusive of Indians*, taxed and untaxed, 88,884.

The subjoined correspondence will explain itself.

## C.

WASHINGTON, Jan. 23, 1851.

SIR: Enclosed you will find a paper which I have prepared, urging upon Congress the passage of a bill declaring New Mexico one of the United States of America *on certain conditions*.

The conditions are, "provided that, by a convention elected by the people of New Mexico for that express purpose, they (the people) acquiesced in the boundaries Congress must now necessarily alter, and express, at the same time, their desire to be now admitted as a State.

The boundaries set forth in the constitution of New Mexico include territory which Congress has declared shall belong to Texas; in order, therefore, to avoid conflict of jurisdiction between New Mexico and Texas, it will be necessary for Congress so to arrange the boundaries of New Mexico as to effect this object; and following the precedent established in the case of Michigan, it will be regular to refer the matter, after Congress shall have arranged the boundaries, to the people of New Mexico for their acquiescence.

If, then, the people of New Mexico acquiesce in the boundaries Congress may prescribe, and also, through the same convention, express their desire to be admitted as a State, the two conditions will be complied with, and, the bill being passed, New Mexico will become a State by the act of her people.

If, however, they, (the people,) prefer a territorial government, they have only to withhold their acquiescence in these conditions, and the territorial organization is retained.

This leaves the matter entirely in the hands of the people of New Mexico.

I beg you to examine the enclosed paper to Congress, and should you agree with me in the arguments advanced, the statement of facts, and in the object sought to be obtained, I earnestly desire your concurrence in the proposed measure.

Very respectfully, your friend,

And obedient servant,

R. H. WEIGHTMAN.

Mr. Wm. S. MESSERVY,

*Representative elect, State of New Mexico.*

WASHINGTON CITY, January 25, 1851.

SIR: I have received your letter dated Jan. 23, with enclosure, urging upon Congress action at this time, in reference to making New Mexico a State on certain conditions.

I have examined your paper with care, and have to say that in the main object which you propose, to wit, reference of the decision of the question of State or territorial government to the people of New Mexico, I entirely agree with you, we only differ as to the mode in which this should be done.

In my opinion, it is more advisable that the subject be referred to the people of New Mexico, *previous* to any action of Congress; as I believe the "bill providing a territorial government for the people of New Mexico," is better calculated to promote their welfare and happiness, and is better suited to their wants and condition, and would be more acceptable than the "State organization" which was entered into by them when they abandoned the hope of obtaining a territorial government.

The people should, undoubtedly, be permitted to control this whole matter for themselves, and they will equally have this control in their hands in the mode I propose as in yours.

Your history of the formation of the State government in New Mexico is correct in all its details, though falling short of giving a just idea of the gross outrages inflicted upon the people by the authorities of that country; what you have detailed, moreover, is correct, and perhaps sufficient to illustrate the point in view.

The arguments used in showing the *right* of the people of New Mexico to be admitted as a State whenever they apply for admission, and present a republican constitution, based as they are upon *national* as opposed to *sectional* grounds, and upon the opinions of distinguished statesmen from different portions of our country, command my entire concurrence and approbation.

I have the honor to be,

Most respectfully, yours,

WILLIAM S. MESSERVY.

Hon. RICHARD H. WEIGHTMAN.

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