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SPEECH

OF

HON. F. W. BOWDON, OF ALABAMA,

ON

THE SLAVERY QUESTION.

DELIVERED

IN THE HOUSE OF REPRESENTATIVES, SATURDAY, JANUARY 16, 1847.

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THE SLAVERY QUESTION.

The Bill to establish the Territorial Government of Oregon being under consideration—

Mr. BOWDON said:

Mr. SPEAKER: I am aware of the influence which the feelings exercise over the judgment, and therefore fear that all efforts to arrest the course of a majority of this House will prove unavailing. But impending defeat does not always enjoin silence, or justify a tame submission to the exactions of power. A blow has been aimed at the rights and honor of the South, which it is the duty of her representatives to expose and resist. We are now engaged in a foreign war; our armies are in the field; and, instead of devising the ways and means of replenishing an exhausted treasury, we are engaged in a heated discussion of the question of slavery, which seems strangely to link itself, at this time, with almost every subject of legislation. Discord reigns where union and harmony should prevail. *What* has produced this deplorable state of things? *Who* are responsible for it? These emphatic questions have been asked by the patriotic throughout the land, and deserve a candid reply. The record of our proceedings furnishes the answer, and proclaims, in a fearful voice, that responsibility lies not at the door of the South.

Near the close of the last session of Congress, whilst the shouts which followed the glorious victories on the Rio Grande were yet ringing in the ears of the nation, the gentleman from Pennsylvania [Mr. WILMOT] offered a *proviso* to the two million loan bill, prohibiting the extension of slavery to any territory which might be acquired from Mexico. The majority here sustained him. At the beginning of this session it was hoped that better counsels would prevail; but we were doomed to sad disappointment. At an early day, a gentleman from New York [Mr. PRESTON KING] offered a bill imbodying the principle of the Wilmot *proviso*, and proposing to enact a solemn law in reference to the government of territory which we have not, and never may acquire.

The second section of this extraordinary bill enacts: "That in any territory which may be secured 'to the United States from Mexico, slavery and in-'voluntary servitude shall forever be prohibited." The principle here set forth has been sustained by speeches of various gentlemen from the North. They denounce slavery as a horrible evil—a dark spot on the national escutcheon—and proclaim it to be the right and duty of the Federal Government to prevent its further diffusion. Under these circumstances the Oregon bill is brought forward, containing a provision prohibiting forever the introduction of slavery into that Territory. In a spirit of patriotic concession, a gentleman from South Carolina [Mr. BURT] offered an amendment, adding to that provision the following words:

> "Inasmuch as the whole of that Territory ['Oregon'] lies north of thirty-six degrees and thirty minutes north latitude, known as the line of the Missouri compromise."

This amendment was rejected, the North alleging that the Missouri compromise only embraced territory east of the Rocky Mountains, and that they are unwilling to extend that line of compromise to the Pacific. In all the haughtiness of conscious power, our opponents appeal from the spirit of the Missouri compromise to the alleged principles of the Constitution, and boldly announce their fixed determination to exert the whole force of the Government to prevent the further diffusion of slavery. From this statement of facts, vouched by the journal of our proceedings, *who* has dragged into this Hall the vexed question of slavery? *Who* are the authors of the ill-starred agitation, which has so much disturbed our deliberations? In every stage of the history of this proceeding, the North has tendered the issue, whilst the South has reluctantly occupied the position of a defendant. Let this important fact be announced here, and proclaimed throughout the Union.

I shall now proceed, Mr. Speaker, to discuss the question at issue, in that spirit of calmness which its overwhelmning importance so imperiously demands. Wit may amuse; denunciation may excite; but argument alone is worthy of a great subject, involving the proper construction of the Constitution, and seriously affecting the interests of a large portion of this Confederacy. The spirit which led to the Missouri compromise has departed. In that measure of concession to the peace and harmony of the Union, the North now finds nothing to commend. The motto is, "We have the power, and we will use it." The South is thus driven to take her position behind the intrenchments of the Constitution, which I trust may prove a stronger barrier to the spirit of encroachment, than any compromise which may be disregarded by the same majority which makes it.

Let us now examine the obnoxious feature of the Oregon bill, and ascertain how far it accords with the principles of the Constitution, and the just rights of the people.

The 12th section provides—

"That the inhabitants of said territory shall be entitled to enjoy all and singular the rights, privileges, and advantages granted and secured to the people of the territory of the United States northwest of the river Ohio, by the articles of *compact* contained in the ordinance for the government of said territory, on the thirteenth day of July, seventeen hundred and eighty-seven; and shall be subject to all the *conditions*, and *restrictions*, and *prohibitions*, in said articles of compact imposed upon the people of said territory."

What "*conditions, restrictions, and prohibitions,*" are imposed by the articles of compact, contained in the ordinance of 1787? The following extracts therefrom imbody the principle which we are about to incorporate in the Oregon bill, and make "*unalterable,*" to wit:

"It is hereby ordained and declared that the following articles shall be considered as articles of compact between the original States and the people and States in the said territory, [northwest of the Ohio river,] and *forever* remain *unalterable*, unless by common consent, to wit:"

"ART. 6. There shall be neither slavery nor involuntary servitude in said territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted."

Such is the anti-slavery feature of this bill, sustained by the majority under the pretext of constitutional power, without reference to the principle of concession. The adaptation of the soil and climate of Oregon to slave labor, and the precedent furnished by the Missouri compromise, can now have no influence upon our course. We are forced to vote upon an isolated proposition, involving the *power* of the Federal Government over the subject of slavery. We are now about to establish a precedent to embarrass us hereafter, and aid our opponents in their wild crusade against southern institutions, carried on under the mask of philanthropy, but really instigated by the double forces of agrarianism and a lust of dominion. If the object be not to commit the Government on the question of jurisdiction, *why* was the amendment offered by the gentleman from South Carolina [Mr. BURT] rejected by a geographical vote? *Why* has slavery been denounced as a dark current, rolling over the continent and withering everything sacred in its march? *Why* has the doctrine been boldly announced that the Californias and New Mexico must be added to the Union, with a perpetual prohibition as to slavery, to surround the South with "a *cordon* of free States?" If I am not deluded in the signs of the times, the future action of this Government will give to these questions an emphatic and fearful response.

I am aware, sir, that gentlemen will vote for this bill who neither desire nor anticipate any evil results. But it must be recollected that the silent motives and collateral considerations, which influence the action of members, will soon be forgotten; whilst the law we are about to enact will remain forever on the statute book, to meet us like an apparition in every future trial of strength. Precedent has already, to some extent, superseded the Constitution, and I am unwilling further to disfigure our legislation by adding to the number of past errors. Even in this debate the action of the old Congress, under the Articles of Confederation, has been unblushingly appealed to, in support of the monstrous heresies which mark the degeneracy of the times.

In opposition to the sentiments thus promulgated, I assume, and will endeavor to maintain, by reason and authority, the following positions:

1st. That new States should be admitted into this Union, without reference to the existence of slavery therein; and to require its abolition, as a condition precedent to such admission, would be a palpable usurpation.

2d. That to accomplish in advance the *same end*, by preventing slaveholders from removing to the Territories with their property, is in derogation of the equal rights secured to *citizens* of this republic, and contrary to the true intent, meaning, and spirit, of the Constitution.

The first proposition is susceptible of an easy demonstration; and the second, if less palpable, is equally true, and follows as a corollary from the first.

In the investigation of these propositions, I utterly discard the idea thrown out in this debate, that the Federal Government possesses any original and undelegated powers. The Union is a confederation of States, in contradistinction to an association of individuals. Its powers are carved out of the States, and limited by the extent of the grants of the Constitution. In the convention which framed that instrument, the States were severally represented; they voted on all its provisions as States; and it was finally ratified by the people of the States, acting in separate and sovereign capacities.

But it is not a little remarkable, that those who claim for the Government jurisdiction over the subject of slavery, have ever been disposed to reverse this reasoning, and thereby magnify the central power at the expense of the States. In this spirit, Mr. Cushman, of Massachusetts, in a speech on the "*Missouri question,*" in 1820, held the following language, which I commend to the special consideration of those who "follow in his footsteps:"

"The safety of our republic, the integrity of the Union, the quietude and harmony of the people, imperiously demand that the proud aspiring States should be taught to know their distance, to lower their lofty crests, to revolve in their humble orbs around the National Government, the sun of the system, and lose their dazzling radiance in the superior splendor of his beams."

This high-toned federalism is broad enough to afford the *restrictionists* a shelter, and "to this complexion must they come" to accomplish their designs.

The relation of the States and General Government must be reversed; history must be forgotten; the recorded opinions of the fathers and builders of our system must be obliterated, to give currency to the new edition of this exploded heresy. Mr. Madison, in commending the Constitution to public favor, thus speaks of its provisions:

"The plan of the convention declares that the power of Congress, or, in other words, of the National Legislature, shall extend to certain enumerated cases. This specification of particulars evidently excludes all pretension to a general legislative authority, because an affirmative grant of special powers would be absurd, as well as useless, if a general authority was intended."—*Federalist, No.* 83.

Such, Mr. Speaker, was the opinion of a statesman justly styled "the Father of the Constitution;" and such was the construction adopted and adhered to by the Republicans of the old school. It is also a familiar portion of our political history, that the Federalists attempted to attain, by *construction*, what the convention had refused to grant in terms. This effort led to an amendment declaring that "*the powers not delegated to the United 'States by the Constitution, nor prohibited by it to the 'States, are reserved to the States respectively or to the 'people.*" If these views be correct, we must resort to the Constitution to ascertain the extent of the powers of Congress, never forgetting that we are limited by the scope of specific grants, and such incidental and implied powers as may be "*necessary and proper*" to carry the express grants into complete effect.

Mr. BRODHEAD. How does the gentleman reconcile his views of the Constitution with our right to acquire foreign territory?

Mr. BOWDON (resuming.) The right to acquire foreign territory has been acquiesced in, and I think properly, by every department of the Government—executive, legislative, and judicial. I not only concede this right, without regard to precedent, but will use it as a convincing argument against the "*restriction doctrine.*" In the case of the American Insurance Company et al. *v.* Canter, (1 Peters, 511) the Supreme Court decided that the United States Government, as incidental to the war and treaty-making power, "possesses the right of acquiring territory." This right is also incidental to the power of "admitting new States into the Union," and in both instances, it comes clearly within the rule of construction for which I contend, as illustrated in the acquisition of Florida, and the Louisiana Territory by treaty, and the annexation of Texas by a joint resolution of the two Houses of Congress. But when territory is thus acquired, the power of Congress over it, as I will hereafter show, is prescribed and limited by the Constitution, and is not the result of inherent sovereignty. The Constitution was designed to operate upon the whole Union, whatever might be its future dimensions; otherwise the rights and equality of the old States would be guarantied by a fixed rule, whilst Congress might dwarf or enlarge the power of the new States at pleasure, thereby substituting the dangerous and varying discretion of a majority, for the fixed and uniform operation of the fundamental law. Such a result was never designed by the founders of the Government; it finds no sanction in the terms of the Constitution; and is at war with the expressed intention of the convention which framed it.

To construe properly any grant of power, it is important to regard the circumstances under which it was made, and the object intended to be effected by it, as well as the words employed. The articles of Confederation contained no general provision for the admission of new States. The article on that subject was specific in its character:

"ARTICLE XI. Canada acceding to this Confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of, this Union; but no other colony shall be admitted into the same, unless such admission be agreed to by nine States."

In contrasting the powers of Congress under the articles of Confederation and the new Constitution, Mr. Madison says:

"Canada was to be admitted of right, on her joining in the measures of the United States; and the other *colonies*, by which were evidently meant the other *British* colonies, at the discretion of nine States. The eventual establishment of *new States* seems to have been overlooked by the compilers of that instrument. We have seen the inconvenience of this omission, and the assumption of power into which Congress has been led by it. With great propriety, therefore, has the new system supplied the defect."—*Fed. No.* 43.

How is this defect supplied? The third section of the fourth article of the Constitution provides that "new States may be admitted into this Union." Under what restrictions? "But," continues the section, "no new State shall be formed or erect-'ed within the jurisdiction of any other State; nor 'any State be formed by the junction of two or 'more States, or parts of States, without the con-'sent of the Legislatures of the States concerned, 'as well as of the Congress." The fourth section of the same article imposes an additional restriction, by requiring the "United States to guaranty 'to every State in this Union a republican form of 'government." Here is a general authority, by the express terms of the Constitution, to admit new States, subject to three specified limitations, neither of which touches the question of slavery. Can a fourth limitation on this general authority be added by the Federal Legislature, exercising delegated and not inherent powers? And here, both in regard to the general grant and its limitations, I invoke the aid of the sound and acknowledged rule of construction, "that as exception 'strengthens the force of a law in cases not ex-'cepted, so enumeration weakens it in cases not 'enumerated."

The authority to admit new States is not limited, as some suppose, to territory lying within the original limits of the Union. The language of the grant does not require such a construction, and the history of the convention forbids it. The article in question, as originally reported, authorized new States to be established "*within the limits of the (then) United States.*" These words of limitation were stricken out, leaving a general power to admit new States, without regard to the territory out of which they might be formed. (Madison Papers, 1240 and 1458.) This view derives great force from other circumstances. Our Union was originally bounded on the west by the Mississippi river, and on the south by the 31st parallel of north latitude. The far-seeing statesmen of the Revolution could not have been ignorant of the importance of extending our limits to the Gulf of Mexico, and over the great valley of the West; thus securing the navigation of the mighty rivers which contribute alike to its prosperity and grandeur, and uniting in one political brotherhood all the inhabitants of that "most magnificent dwelling-place of man."

If, then, the framers of the Constitution anticipated the admission of new States, without limitation as to the territory out of which they were to be formed, and desired the restriction of slavery within its original limits, *why* was the power conferred in the one instance, and withheld in the other? There is an express authority to admit

new States. Is there any such authority to confine slavery within any given parallels of latitude and longitude? Is the desired restriction "*necessary and proper*" to carry into effect any enumerated power? Every candid mind must give to these questions a negative answer. Would such a vast power as that now claimed, have been left to mere implication? A brief review of the past history of the country rids the matter of all doubt. At the date of the Declaration of Independence, slavery was tolerated in all the colonies, and continued to exist in most of the States when the Constitution was formed. Many of its framers were slaveholders, and exercised in the convention no unimportant influence. They never would have consented to any plan of union, drawing a distinction invidious and degrading to the southern States. The Constitution confers on the Government no power to abolish or restrict domestic slavery, whilst it imposes on the States no prohibition to its establishment. That institution was regarded as local in its character, to be established and regulated alone by the municipal law. This question was raised in the convention, thoroughly discussed, and fully settled. Jurisdiction was conferred on Congress, in express terms, over the subject of the *foreign slave trade* after the year 1808; but no power was given to prevent the diffusion of *domestic slavery*. And here the maxim applies in full force, *expressio unius, exclusio alterius*. A power was given, however, to extend the limits of our Union, and, from this, we may well infer a contemplated expansion of all its institutions.

But we hear much of the compromises of the Constitution, and an unwillingness to extend them. No extension is asked or desired. What are these compromises? They have no reference to emancipation or the diffusion of domestic slavery; but look alone to taxation and representation. These were the questions which perplexed the convention The northern delegates, with John Adams at their head, argued that slaves were property, and should therefore be taxed and not represented; whilst the South contended for representation without taxation. A compromise was finally effected, by which slaves were properly regarded as partaking of the mixed character of persons and of property. In unison with these views, the third section of the first article of the Constitution provides: that "representatives and direct taxes shall be apportioned among the several States which *may* be included within the Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those *bound to service* for a term of years, and excluding Indians not taxed, *three-fifths* of all other persons," [meaning slaves] This provision refers not alone to the States which are, but also to those which *may be*, included within the Union; and therefore is not local in its influence nor temporary in its duration. Various other clauses of the Constitution directly sustain this idea; all harmonize and none conflict with it. If Congress can call upon a State to relinquish the right to establish slavery as a condition of admission into the Union, all other State rights may be expunged in the same manner. It must be recollected, that many of the provisions of the Constitution were the result of concession and adjustment. All these, if the argument in regard to slavery be true, may be limited in their effects to old States, by requiring humiliating conditions to the admission of new ones. By compromise the large and small States are entitled to an equal representation in the Senate. Can any new State be deprived of this equal senatorial representation as a condition of admission? No one ever had the hardihood to contend for such an absurdity. And yet the subject matter in dispute, and not the respective merits of the argument, constitutes the only difference between the restriction now so warmly contended for, and that which finds not a single advocate.

The right of a State to establish or continue the relation of master and slave is *reserved;* whilst the right to equal representation in the Senate is guarantied by the Constitution. But no republican can contend that the *reserved* rights of the States, pertaining to their local affairs, are less sacred than Federal rights, secured by the Constitution for Federal purposes. If any of these rights can be invaded, there is no security for the remainder.

But the fallacy and absurdity of the restriction doctrine may be exposed by a variety of tests. The second section of the fourth article of the Constitution declares, that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." Now, it is an acknowledged right of the citizens of the original States to establish slavery; and if the same privilege is wrested from the new States, their contemplated equality is destroyed. This clause, whilst it checks the Federal Government, imposes no restraint on the voluntary abolition of slavery by the States, but secures freedom of action to each in regard to its own municipal regulations. The Constitution contains various prohibitions upon the powers of the States. I now ask the gentleman from New York [Mr. KING] if these prohibitions apply to the new States?

Mr. KING. They apply to all the States.

Mr. BOWDON. Then the guarantees of the Constitution must have a like operation. The benefit of the latter constitutes the consideration for submitting to the former. But if Congress may require the surrender of a reserved right of a State as the condition of its admission, then the State may in turn contract for an exemption from the constitutional prohibitions. The rule of construction and the force of the argument would be the same in both cases. Thus a State might surrender the right to impose a direct tax on the *personal* property of its citizens, and in lieu thereof acquire the power to lay duties on imports; thereby frustrating the revenue laws of the General Government, and destroying the harmonious operations of our Federal system. A new State must be admitted into the Union under the fixed rules prescribed by the Constitution. That instrument adjusts the balance of power between the States and the Federal Government; and that balance cannot be varied by legislative restrictions. Congress cannot amend the Constitution; that high power is lodged in other hands.

But it is contended that Congress may or may not, at their discretion, admit new States, and

therefore may admit on conditions. The premises are correct, but the conclusion is fallacious. There is a broad and well-defined distinction between *misfeasance* and a failure to act. Congress may obstinately refuse to act, or may reject; but if a State is admitted *at all*, it must come into the Union in conformity with the Constitution. The power of Congress is "to admit *new States*," not provinces or dependencies. A *State, ex vi termini*, retains certain reserved rights, submits to certain prohibitions, and is entitled to certain guarantees. These rights, prohibitions, and guarantees, are fixed by the fundamental law, and cannot be varied without its amendment.

The Constitution invests Congress with power to lay and collect taxes, duties, imposts, and excises. Congress may or may not, at their discretion, exercise this power; yet it cannot therefore be exercised in a manner different from that prescribed. "*All duties, imposts, and excises must be uniform throughout the United States.*" So must every "*State*" possess the powers, and be subject to the liabilities and disabilities, which that term, in its constitutional meaning, imports; otherwise, it is not a "State," possessing a certain and fixed character and regular proportions, but is the mere creature of Congress, and may be either a giant or a dwarf, according to the prevailing whims of the moment; and, unlike other misshapen beings, we are told it can never outgrow its deformities.

These views are conclusive against the power of Congress, by direct action, to encumber the reserved rights of a "*State*" (not the creature of Congress) with restrictions as the condition of its admission.

But the gentleman from Maine [Mr. HAMLIN] contends that, by a circuitous process, this result may be attained. With all becoming gravity, he announces the general proposition, that the people of a territory, in their *sovereign capacity*, may enter into compacts with the General Government that will be binding upon them when admitted into the Union, and that such compacts are irrevocable ever afterwards. Prudently declining argument, the gentleman calls to his aid the power of precedent, forgetting that the Constitution is the most potent of all precedents. No unwarranted usage can change the "fixed fact," that the relations of these States towards each other and the Federal Government are determined and settled by the fundamental law. But the precedents relied on by the gentleman are harmless to his opponents, and dangerous only to his own cause.

What are these *precedents?* The acts for the admission of Michigan, Florida, Iowa, and other States of the Union, "on the express condition 'that they shall not interfere with the primary 'disposal of the public lands lying within them, 'nor lay any tax on the same whilst remain-'ing the property of the United States." These restrictions and conditions are expressly authorized by the third section of the fourth article of the Constitution, which provides that "the Congress 'shall have power to dispose of and make all need-'ful rules and regulations respecting the *territory*, 'or other *property*, belonging to the United States." The Congress may therefore well impose on the new States, all "needful restrictions respecting the 'territory or other property belonging to the Uni-'ted States;" but in the execution of this power, they cannot go further, and make rules and regulations for a State, in regard to *slaves belonging to individuals*.

I do not contend that no restrictions whatever can be imposed on a State applying for admission; but that such restrictions must come within the grants of the Constitution. Now, the disposition of the public lands pertains expressly to Congress; that disposition might be interfered with, or wholly frustrated, if the States possessed the power of taxing them before they are sold. It may also be "needful" and proper to exempt them from taxation for a limited period after a sale. Congress, therefore, in requiring agreements as to the public lands, acts within the pale of its delegated powers, and therefore does not trench upon the residuary and inviolable rights of the States. These *reserved* rights cannot be transferred to the Federal Government, nor extinguished by an unauthorized compact.

I have dwelt thus long in tracing the relation of the States to the Federal Government, because on that relation depends, in a great degree, the duties of Congress towards the Territories. These are but States in infancy, advancing to a condition of manhood. The Constitution clearly contemplates, in the acquisition and possession of territory, not distant provinces filled with dependent subjects, but "new States," resembling in form and rivalling in equality their elder sisters. With this great object in view, and with a written chart as our guide, the path of duty is plain. Cast aside that written chart, and all is confusion; the will of the majority becomes the measure of the rights of the minority; a vast labyrinth of powers opens before us, the extent of which no man can estimate. That labyrinth we are now about to enter, under prospects more gloomy than any that hitherto lowered upon our country. *When* or *how* we shall escape from it, if the fatal step be taken, is a problem to be solved by the fearful future. The proposition is distinctly announced that the whole force of this Government is to be exerted hereafter to disparage the institutions of the South. The preliminary movement, in this grand scheme of aggression, is the modest assumption of supreme and sovereign control, on the part of the Federal Government, over our present possessions and future territorial acquisitions. Into these regions, whatever be their extent, and however obtained, slaveholders with their property are never to enter. When these footholds are gained, it requires not the spirit of prophecy to foretell the next step in this onward march to revolution. Fanaticism will then lead the crusade and become the ruling deity of the hour, subordinating, as it always does, the propriety of means to the accomplishment of ends. I would not willingly darken the perspective with imaginary evils, and gladly would I banish, if it were possible, these sombre forebodings. But it is not the part of wisdom to be unmindful of the sad realities of the present, nor to close the eye to the ill-boding shadows of coming events. Heretofore the anti-slavery agitation has been the work of a faction; now it is the organized movement of a great section of the Union. The plan of opera-

tions, foreshadowed in the bill of the gentleman from New York, [Mr. KING,] was distinctly described in his written speech which followed it. That speech found its way into this House in the unpretending shape of a "*personal explanation.*" But it carried with it all the ear-marks of deliberation and preconcert. Whilst the gentleman was rehearsing in the foreground, I saw, or thought I saw, behind the scene the hand of a master-prompter, and was ready to exclaim, in the language of Holy Writ, "the voice is Jacob's voice, but the hands are the hands of Esau." Some of the undercurrents in this movement may be checked. The stirrer of the storm is not always the rider of the wind.

The gentleman from New York does not contend that Congress can impose upon a Territory the inhibition of slavery as the condition of its admission to the rank of a State; but claims for the Government complete and supreme control up to that period. Why this distinction? It is one of recent origin, and would seem to be manufactured to suit the occasion. In most of our territorial possessions, slavery has no existence. If, therefore, these vast unsettled regions may, *by legislative action*, be populated by persons owning no slaves, and opposed to the system, the object of the restrictionists is accomplished. But when Missouri, settled by slaveholders, applied for admission into the Union, jurisdiction was claimed over the State as well as the Territory. The object in view seems to mould the doctrine of the North on this subject. In 1803, they maintained that the Constitution did not authorize the acquisition of Louisiana. But *now* the same section cries aloud for more territory, and discovers no impediment to extending "*free labor and free institutions*" over half Mexico. And over this vast region, when acquired, it is contended, that the Federal Government is sovereign, and in virtue of this sovereignty may determine what is the subject-matter of property, and thereby decide and select the character of the population and the future form of State Government. Now, in all sincerity I ask, what is the *practical* difference between *requiring* the people of a Territory to form a constitution prohibiting slavery, and in excluding from it all those who will not *voluntarily* do so? It is the difference between direction and indirection—between manliness and evasion. On the rights of citizens in the slaveholding States, and on the balance of power in the Union, the effect is IN FACT, and BY DESIGN, precisely the same. I therefore denounce such legislation as contrary to the spirit and intent of the Constitution, and derogatory to the equal rights of the citizens of this republic.

But whence is derived this overshadowing power? Unfortunately its advocates disagree among themselves as to the source from whence it emanates. The gentleman from Maine [Mr. HAMLIN] fortifies himself behind legislative precedents and supposed decisions of the Supreme Court. I have already shown that the restrictions imposed upon new States in reference to navigable rivers and taxing the public lands, are based upon the provision of the Constitution authorizing Congress to "make all needful rules and regulations respecting the territory and other property belonging to the United States." The other supposed precedent is the celebrated ordinance of 1787, for the government of the Territory northwest of the Ohio river, which it is said the Supreme Court have pronounced unchangeable. If that ordinance be irrevocable, it ought never to be extended over another Territory. *Unchangeable regulations* are not congenial with the constitutional doctrines of America. Not only the Declaration of Independence, but the constitutions of almost every State in the Union declare, that Government derives its just powers from the *consent of the governed;* that the people may reform, alter, or *totally change* the same when their protection and happiness require it. The restriction argument derives no aid from these fundamental doctrines, nor from the decision of the Supreme Court of the United States in the case of Menard *vs.* Aspasia, (5 Peters, 515.) Certainly this case does not *perpetuate* the ordinance; and if it were effectual and operative over the Territory, before it was divided and formed into States, the precedent is unavailing for obvious reasons. That ordinance was not a legislative act, as is the bill excluding slavery from Oregon. It was in the nature of a "*compact between the original States*, and the people and States of the Northwest Territory." Secondly, it was passed by the old Congress under the Articles of Confederation, in 1787, and not by virtue of any general power contained in the present Constitution, which was formed in 1789. Thirdly, the validity of this ordinance was generally doubted, and by many denied; and, in consequence of these doubts, the first clause of the sixth article of the Constitution was adopted, validating preëxisting contracts and engagements, only so far as they were valid under the articles of confederation. A cause that rests on such precedents must indeed be frail and tottering.

I will now examine the position of the gentleman from Illinois, [Mr. McCLERNAND.] For the ability and liberal sentiments of that gentleman, no one entertains a higher respect than I do. Coinciding generally with his practical views, I regret to differ with him on the abstract question of *power*. I understand him to maintain *that the capacity to acquire territory is incidental to every government; that in our system, the States do not possess this power; and* THEREFORE, *it belongs to the Federal Government; that the power to govern is involved in the power to acquire; and that, in virtue of the power to govern, Congress may prescribe that slavery shall or shall not exist in the territories.*

I know not by what authority it can be asserted that all governments possess any one power or class of powers. I had supposed that the powers of every government varied according to its form and structure. But to narrow the issue, I will concede that our Government possesses a *delegated* (not an *inherent*) power to acquire territory, and yet, with this concession, I boldly controvert the gentleman's conclusion. I still deny that Congress may exclude the slave property of the South, or the stock and implements of trade and husbandry of the North, from territory acquired by, and "belonging to, the *United* States." Let not the precise issue be mistaken: it relates to the *extent*, not the *existence*, of Federal authority to make Territorial

regulations. Now, the issue must be determined alone by the Constitution, as this Government can exercise none but *delegated* powers—the residuary mass of powers, not prohibited to the States, remaining with the States respectively, or with the people. This restriction is expressly imposed by the tenth article of the Amendments to the Constitution, and constitutes my shield of defence and weapon of attack. To prevent misunderstanding, I repeat that delegated powers include not only express grants of the Constitution, but all such implied and incidental powers as may be "*necessary and proper*" to give to such express grants complete effect. Now, does the Constitution confer an express authority to establish Territorial or Provincial governments? No such general power is, or ever was, designed to be granted. Not only the language of the Constitution, but the history of the Convention which framed it, fortifies this conclusion. By reference to that history, it will be found that "Mr. Madison submitted, in order 'to be referred to the Committee of Detail, the 'following powers, as proper to be added to those 'of the General Legislature, to wit:

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

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

Mr. Madison's propositions were rejected; the committee reported in lieu thereof, and the convention adopted, the third section of the fourth article of the Constitution, giving "Congress the power 'to dispose of and make all needful rules and regu-'lations respecting the territory or other property 'belonging to the United States."—(*Madison Papers, pp.* 1352, 1558, 1620–21.)

All powers incidental to this clause of the Constitution Congress may well exercise; but this provision refers primarily to territory as *property*, and is operative not only over territorial lands, but over the unappropriated lands in the States.

Mr. McCLERNAND. Whence does the gentleman derive the power to establish territorial governments?

Mr. BOWDON. So far as that power exists, it is derived from the clause just quoted; and the last clause of the eighth section of the first article of the Constitution, authorizing Congress "to make 'all laws which shall be necessary and proper to 'carry into effect all the powers granted to Con-'gress or vested by the Constitution in the Gov-'ernment of the United States, or in any depart-'ment or officer thereof."

Mr. McCLERNAND, again interposing, said the doctrine contended for could not be true, as it elevated the incident above the principal; that a specific "power to dispose of and make all needful rules and regulations respecting the territory," *as property*, could not confer a general authority of government.

Mr. BOWDON. That general and unlimited authority to govern is just what I controvert. The convention refused to confer any such general, undefined, and unlimited powers, and in lieu thereof made the grant respecting the territory and other property belonging to the United States, as I have before shown. The convention could not have forgotten that the Revolution was the immediate result of the claim of power, on the part of Parliament, "to bind the colonies in all cases whatsoever"—a power not more stupendous or more odious, than would be the unlimited power of Congress to legislate for the Territories.

Gentlemen seem to think there is no middle ground between limited constitutional power and the reach of undefined despotism, the very essence of which would be a right to make any and all laws for the unrepresented inhabitants of the Territories. To avoid this result, I would subordinate the jurisdiction of Congress to the express grant to make all "needful rules and regulations respecting the territory and *other property* belonging to the United States." In addition to this, the express prohibitions of the Constitution can never be disregarded in any action of the Government. Subject to these limitations, the power of Congress over the Territories would be ample for all useful purposes, and extend quite as far as would be consistent with republican principles. In illustration of this view, it is "*needful*" to sell the public lands; but lands cannot be sold without purchasers; sales cannot be made, unless buyers are protected in their rights of person and property; to protect *these*, laws are necessary. These functions Congress not *only may, but ought to, discharge*. But to do so, it is not *needful* to suppress the freedom of speech; to interdict marriage; to suspend the privileges of the writ of *habeas corpus;* to pass a bill of attainder, or grant titles of nobility—all of which could be done, if the powers of Congress over the Territories are undefined and supreme, or, as the gentleman from Indiana [Mr. PETTIT] contends, *sovereign*. Yet no one of these high functions of sovereignty can be exercised, if the powers of Congress are derived from the Constitution.

Cannot lands be sold, and the purchasers protected in all their rights, without excluding slaves from the Territories? The experience of the country requires every one to give to this question an affirmative answer. But Congress may, in virtue of the express grant to which I have alluded, reserve the primary disposal of the public lands; and prevent the inhabitants from forming alliances with foreign nations. Subject to the prohibitions contained in the Constitution, the territorial legislature should be authorized to regulate and control all matters of mere local concern. And such has been the course of the Government in regard to all the Territories, except those embraced in the ordinance of 1787, and the Missouri compromise act. The idea that Congress, by anticipative action, should form the character and control the domestic relations of the people of the Territories, is a remnant of the despotism of past ages, and revives in full force the doctrine that the will of a few should be paramount to the wishes of a community. I must be pardoned for believing that the moral responsibility of politicians for permitting entire communities to regulate their domestic affairs has been, in this debate, somewhat overrated. The sins of this description will be easily atoned for, when those of an opposite character shall have been pardoned.

The argument of the gentleman from Illinois [Mr. McCLERNAND] involves the huge error,

that the right of Congress to regulate or abolish slavery in the Territories is plenary, because that right does not belong to the several States. There are many powers pertaining to sovereignty which, under our federative system, can neither be exercised by Congress or the States. Such powers, by the 10th article of amendment to the Constitution, are expressly reserved to the "*people*," and belong to the people of the Territories, not less than to the people of the States. Residuary powers are unknown to our Federal Government. This partition of powers, between the Federal Government and the people of the Territories, accords with the limited and cautious grant of the Constitution and the great principles of republicanism. It is also commended by its practical operation, as exemplified in the history of the territorial governments of Florida, Arkansas, and Mississippi; in the organization of which, Congress exercised only the powers which my argument concedes. In thus deriving the powers of Congress from the express grant, to make all needful rules and regulations respecting the territory belonging to the United States, I am sustained by the concurring testimony of a host of distinguished statesmen. I may also invoke the authority of our most eminent jurists and commentators, of the broad construction school, including Marshall, Kent, Story, and Sergeant, who are inclined to refer the authority of Congress over the Territories, to the same clause of the Constitution on which I rely. The argument, that the right to acquire territory creates the necessity to govern, is fully met by the fact that the Constitution has pointed out the mode and manner of government. Power cannot be implied against, nor to extend an express provision; the rule of construction being, that "*enumeration weakens a power in cases not enumerated.*"

But it may further be objected, that my position, if true, would confer on the General Government jurisdiction in the States. So it does, in reference to the mode and manner of selling the public lands; but it is not "needful" that the federal authority should be exerted for the protection of life and property. These ends are amply secured by the State Governments.

If, however, the gentleman from Illinois be correct in deriving the power to govern, from the right to acquire, territory, that *power* would not be unlimited, or reach to the extent supposed. The powers of the Federal Government cannot be determined by any isolated provision of the Constitution, but must be limited and controlled by the joint force of all its parts. When the various provisions of that instrument are compared and examined, the absence of the power in question will be manifest.

The second section of the first article apportions representatives and direct taxes among the several States on the basis of population, estimating slaves on the three-fifths principle. It also requires an enumeration to be made within every ten years. This clause is the basis of political power in the Union, and the measure of direct taxes. This basis cannot be affected by the direct action of Congress, nor should it be indirectly, by confining population to any specific area. It is prospective in its character, and applies to the new as well as the old States. Confine it to the latter, and there is no authority in the Constitution to take the census in the new States, and no power to impose direct taxes upon them. The ninth section of the same article provides that "*no capitation or other direct 'tax shall be laid, unless in proportion to the census 'or enumeration hereinbefove directed to be taken.*" It is thus demonstrable that the clause in reference to representatives and direct taxes embraces all the States. If this be true, is it not reasonable to suppose that the framers of the Constitution anticipated an expansion of the slave States with the growth and settlement of the country?

This conclusion becomes irresistible, when we reflect, that, without this expansion, the slaveholding States must necessarily lose their relative strength and influence in the Senate. For whilst it is true that federal numbers are not represented in the Senate, it is equally true that the character of the population of a State determines the feelings and action of her Senators. This conviction, I fear, now hurries on those who are pretending to fight under the banner inscribed, "Freedom to the world." The day will come, when those who are now blind will see. The time is not far distant, when the mask of philanthropy will be thrown aside, and the purposes of politicians distinctly proclaimed.

I will now present the subject in a different aspect. Congress may impose a direct tax on the Territories; but it must be in "proportion to the census directed to be taken by the Constitution." (5 *Wheaton's Reports*, 317.) The *three-fifths* principle, as to direct taxes, prevails as well in the Territories as in the States. Now, is it not manifest, that if the relation of master and slave be dissolved, these slaves become "free persons," and the *whole* number, instead of *three-fifths*, must be counted in the apportionment of taxes? The rule of apportionment fixed by the Constitution would thus be superseded by the act of Congress; the taxes upon the Territories would be increased two-fifths, so far as the slaves were concerned, whilst the ability to pay would be diminished.

This view is conclusive against the power of Congress to abolish slavery in the Territories where it may exist. But it may be replied, that the force of this reasoning can be avoided, by declaring, in advance, that slaves shall not be carried there. It is obvious, however, that Congress cannot exercise this power. Slaves are either property or persons, or partake of a mixed character. If they are persons, the right of locomotion cannot be denied them. If they partake of the mixed character of persons and property, as Mr. Madison says, then it is evident that Congress cannot prohibit their removal to a Territory; but must act, if at all, directly on the relation of master and slave. The power to regulate domestic commerce confers no jurisdiction in regard to domestic slavery; as was adjudged by the Supreme Court of the United States in the case of Groves *et al. vs.* Slaughter. (15 *Peters*, 505.) The correctness of this decision is placed beyond doubt by the ninth section of the first article of the Constitution, which recognises the right of Congress to prohibit the introduction of slaves, from abroad, into any portion of our territory, except in such of the old

States as thought proper to admit them prior to the year 1808. This affirmation of power as to *foreign slaves*, by every rule of construction, implies a negation of authority in the case of *domestic* slavery.

This construction is not only demanded by the language of the Constitution, but it is vouched for by a leading member of the convention which framed it. In the debate of 1820 on the "Missouri Question," Charles Cotesworth Pinckney thus spoke:

"The supporters of the amendment contend that Congress have the right to insist on the prevention of involuntary servitude in Missouri, and found that right on the ninth section of the first article, which says, "the migration or importa-'tion of such persons as the States now existing may think 'proper to admit, shall not be prohibited by the Congress 'prior to the year 1808; but a tax or duty may be imposed 'on such importation not exceeding ten dollars.'

"In considering this article, I will detail, as far as at this distant period is possible, what was the intention of the convention that formed the Constitution. The intention was to give to Congress a power, after the year 1808, to prevent the importation of slaves, either by land or water, from other countries. The word, *import*, includes both, and applies wholly to slaves. Without this limitation, Congress might have stopped it sooner, under their general power to regulate commerce, and it was an agreed point, a solemnly understood compact, that, on the southern States consenting to shut their ports against the importation of Africans, no power was to be delegated to Congress, *nor were they ever to be authorized to touch the question of slavery;* that the property of the southern States in slaves was to be as sacredly preserved and protected to them, as that of land or any other kind of property in the eastern States was to be to their citizens.

"The term, or word, migration, applies wholly to free whites; in its constitutional sense, as intended by the convention, it means a "*voluntary change of servitude*" from one country to another. The reasons of its being adopted and used in the Constitution, as far as I can recollect, were these, that the Constitution being a frame of government, consisting wholly of delegated powers, *all power not expressly delegated*, being reserved *to the people of the States*, it was supposed that without some express grant to them of power on the subject, Congress would not be authorized ever to touch the question of migration hither, or emigration to this country, however pressing or urgent the necessity for such a measure might be; that they could derive no such power from the usages of nations, or even the laws of war; that the latter would only enable them to make prisoners of alien enemies, which would not be sufficient, as spies or other dangerous emigrants, who were not alien enemies, might enter the country for treasonable purposes, and do great injury; that, as all governments possessed this power, it was necessary to give it to our own, which could alone exercise it, and where, on other and much greater points, we had placed unlimited confidence; it was therefore agreed that, in the same article, the word migration should be placed; and that, from the year 1808, Congress should possess the complete power to stop either or both, as they might suppose the public interest required. The article, therefore, is a *negative pregnant*, restraining for twenty years, and giving the power afterwards."

In the same speech, Mr. Pinckney says that Congress has no more power to abolish slavery in the Territories than in the States. Over this subject the framers of the Constitution did not design to give to Congress any jurisdiction whatsoever, except in regard to the foreign slave trade. If the Constitution is not explicit on this subject, when taken in connexion with the proceedings of the Convention and our past history, then it is utterly vain to attempt restrictions on parchment.

In addition to the limitations upon the Government, each State, by the terms of the Constitution, has entered into a solemn compact of non-interference and amity; thus throwing around the rights of slaveholders all the guards and restrictions of which human foresight was capable.

The 2d section of the 3d article provides that "*No person* [meaning a slave] *held to service or labor in one 'State, under the laws thereof, escaping into another, 'shall, in consequence of any law or regulation therein, 'be discharged from such service or labor, but shall be 'delivered up on claim of the party to whom such ser-'vice or labor may be due.*" If a horse stray from one State to another, and be unlawfully detained, his owner must resort to an action at law for his recovery; but if a slave escape, he may be regained by a summary process. In the face of these facts, are we to be told that slaves are not regarded as property, and that the rights of the slaveholding States, instead of being protected in good faith, are to be the object of unceasing assault? Shall that institution, guarded by the framers of the Constitution with every check which a solemn compact can impose, be singled out for special attack? Shall the Union which our fathers established be transformed to suit the varying wishes or interests of a heedless majority? If so, the time has indeed arrived when the South should cease to repose in false security, and awaken to the dangers which surround her.

Every one who has read the Constitution and the history of the country knows, that domestic slaves (and I speak of them only) partake of the character of property; the master has a right to their services and labor, and Congress cannot divest this right, except "for public use, and upon paying a just compensation." These are not the sentiments of the South alone. In former days they were promulgated by candid and enlightened jurists of the free States. On this subject Chief Justice Tilghman remarks:

"Whatever may be our private opinions on the subject of slavery, it is well known that our southern brethren would not have consented to have become parties to a Constitution under which the United States have enjoyed so much prosperity, unless their *property* in slaves had been secured."—5 *Serg. and Rawle*, 63.

In reviewing the same subject, Judge Baldwin held the following emphatic language:

"The ownership [of the slave] being thus clearly made out, he must be deemed to be the *property* of [the master,] over which he has the same control as over his land or his goods." * * * * * * *

"The law of the land recognises the right of one man to hold another in bondage, and that right must be protected." * * * * * * *

"As a consequence of this right of property, the owner may keep possession of his slave. If he abscond, he may retake him, by pursuit into another State.—1 *Baldwin's Reports*, 577.

"Look at the first article, and you will see that slaves are not only property as chattels, but political property, which confers the highest and most sacred political rights of the States, on the inviolability of which, the very existence of the Government depends." * * * * * * *

"Thus you see that the foundations of the Government are laid and rest on the *rights* of property in slaves: the whole structure must fall by disturbing the corner-stone."—*Ibid*, 596–'7.

Are the political rights of the slaveholding States respected, when the Government assumes to locate and distribute the sources of their strength? Suppose Congress, to aggrandize the South, should preclude the inhabitants of the free States from removing with their property to regions acquired by

the joint blood and treasure of the nation. Every freeman of the North would buckle on his armor, and, gathering fresh courage from the recollections of the past, wage a war of extermination against his oppressors. If the majority should not thus be proscribed, by what political morality is the same injustice to be visited upon the minority?

But this odious distinction affects individuals as well as States. Is the right of the owner protected when he is compelled to abandon his slaves, in order to remove to the common domain of the Union? Surely no such invidious discrimination was contemplated by the framers of the Constitution. It is at war with every principle of equality and fairness. To whom does the public domain belong? To the United States. Congress is the common agent of all the partners, to administer a great trust. Is this high duty performed by appropriating to the exclusive use of a part, that which is guarantied to all? The spontaneous feelings of the heart rise up in rebellion against such an open disregard of justice?

What excuse is rendered for this giant stride to undivided empire? As usual, despotism veils itself in deceitful robes, and conceals its ultimate object under the mask of preventing the extension of slavery! No such false issue can be made. The question is as to the locality and condition of those who are already slaves. True philanthropy would diffuse, not congregate them into a narrow compass, or make them fixtures to the soil. More horrible still is the purpose—scarcely disguised—of breaking the fetters of the slave by rendering his labor unprofitable, and thus substituting, for peaceful subjection, a bloody contest of rival races, the horrors of which, even in the distance, cause the patriot to shudder.

This wholesale proscription of a large section of the Union will never be tolerated, until the degeneracy of the South shall invite the chains which reckless power would rivet upon her limbs. Distant—far distant—be the day when any portion of the American people will tamely yield to undisguised despotism. This daring move to banish a respectable minority from the common heritage of the nation, outrages every principle of republicanism, and finds no parallel in our history, save in the drama which led our fathers to a successful and ever-glorious resistance of British tyranny.

This Government was formed to protect the rights of all. Its blessings and burdens should be mutual. In the prosecution of the war in which we are now engaged, the South has willingly tendered her treasure and the blood of her noblest sons. Now, as heretofore, she gloriously rallies around the national flag, rejoices in its triumphs, and mourns its disasters. When the contest is over, and victory won, she will demand, not the badge of degradation, but an equal participation in the fruits of a joint struggle.

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