Speech of Congressman John Cadwalader

A speech of Hon. John Cadwalader, Congressman from Pennsylvania, on the legislation of the United States upon the subject of slavery in the territories, delivered in the U. S. House of Representatives, March 5, 1856.

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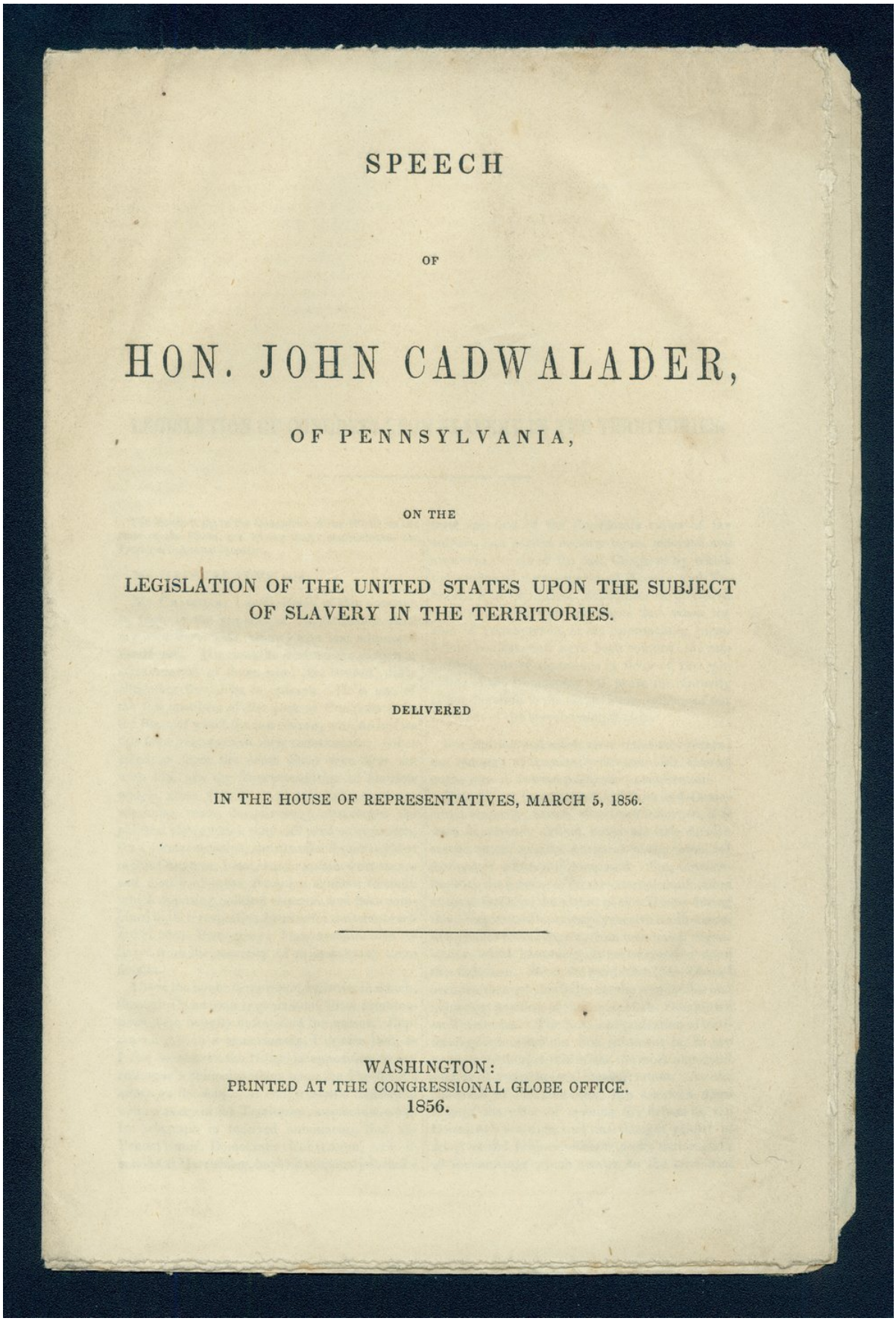

SPEECH

OF

HON. JOHN CADWALADER,

OF PENNSYLVANIA,

ON THE

LEGISLATION OF THE UNITED STATES UPON THE SUBJECT OF SLAVERY IN THE TERRITORIES.

DELIVERED

IN THE HOUSE OF REPRESENTATIVES, MARCH 5, 1856.

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Speech of Congressman John Cadwalader

LEGISLATION OF CONGRESS UPON SLAVERY IN THE TERRITORIES.

The House being in the Committee of the Whole on the state of the Union, and having under consideration the President's Annual Message,

Mr. CADWALADER said:

Mr. CHAIRMAN: I avail myself of this occasion to reply to the remarks of the gentleman from my own State [Mr. GROW] who last addressed the House. His remarks deserve the particular consideration of those who, like myself, differ altogether from him in opinion. He is one of the few members of the present Congress from the State of which I am a citizen, who do not on this floor misrepresent their constituents. Other members from the same State who here act with him are the Representatives of districts which, since they were elected, have, by overwhelming votes, unequivocally condemned the political views which they still profess to sustain. On a former occasion, shortly after I took my seat in this Congress, I stated and explained the causes and modes of those deceptive artifices through which opposing political elements had been combined in their respective districts for the temporary defeat of the Democracy. I am therefore now relieved from the necessity of recapitulating these details.

I have the honor to represent a district in which, through Democratic organization, these combinations were happily defeated in the outset. Representing such a constituency, I rejoice that, as I rise to address the House in opposition to my colleague's animadversions upon the President's views on the subject of congressional legislation upon slavery in the Territories, a communication by telegraph is received announcing that the Pennsylvania Democratic Convention, now in session at Harrisburg, have unanimously declared their approval of the President's views of the subject, and have in decisive terms indorsed and approved the act of the last Congress by which the territorial governments of Kansas and Nebraska were organized. It requires no prophetic spirit to predict with confidence that, when the vote of Pennsylvania in the approaching presidential contest shall have been counted, the majority by tens of thousands in favor of the candidate of the Democracy will prove the sincerity of her devotion to the constitutional rights of our brethren of the slaveholding States.

For another and much more important reason, the remarks of the same gentleman [Mr. GROW] ought now to receive particular consideration.

This House is organized under an anti-Democratic majority, whose shortlived influence, if it were not already extinct, could not long survive certain recent suicidal measures of the combined factions of which it is composed. But, notwithstanding the present or future external annihilation of these factions, the action of this House during this Congress will necessarily receive its direction, in a greater or less degree, from its internal organization, which has unhappily been dependent upon this influence. Now, the gentleman [Mr. GROW] occupies through this influence the responsible and influential position of chairman of the Committee on Territories. The future organization of territorial governments on this continent is, in my humble opinion, at this crisis, the most important subject of congressional consideration. As the chairman of this committee has assumed upon himself the office of opening the debate on the President's message, and has thought proper to select as the subject of his remarks that portion of the message which relates to the territorial

governments established by the last Congress, we have a just right to measure his views by such a standard as may determine whether their extension is proportional to the magnitude and importance of the functions of the committee of whose views he has been constituted the exponent.

In defining the functions of this committee we naturally regard, first, the extension of our whole country, and next, that of the Territories. The superficial area of the United States, according to the latest geographical compilations, is more than three and a third millions of square miles. There are some errors in that computation; but the actual area is probably not less than three and a quarter millions of square miles. Of that area, less than one half has been organized into States. Of the thirty-one existing States, two, Texas and California, cannot be regarded as permanently organized. Within the restricted boundaries of Texas, as truncated on the north and on the west with her own consent in 1850, her present area is, perhaps, not much less than 300,000 square miles. By the legislation of 1850 her territory is divisible into five States, as it was before her limits were thus narrowed. By the same ratio California will be divided into at least three States. Thus, there are only twenty-nine States whose organization can be regarded as permanently completed. These twenty-nine States include less than one third of the extent of our whole country. Beyond their limits, we have, including Texas and California, a territorial extension of more than two millions of square miles, out of which certainly more than thirty, and perhaps as many as forty, or more, States ought hereafter to be organized.

This brief statement may give some idea of the magnitude and importance of the proper functions of the Committee on Territories of this and succeeding Congresses. When we look forward to the future extension of our population, must we not shudder at the probable effect of the agitation which such arguments as those of the chairman of the present committee have a tendency to provoke? Can we hope to organize Territorial or State governments under a disturbed state of feeling, such as his arguments would engender? It would be impossible. We are soon to be divided into sixty, or more probably seventy States, if the normal conditions of our country's progress can be fulfilled. These conditions of our progress, and of its attendant happiness and prosperity, cannot be fulfilled unless the legislation on the subject of slavery in the Territories is to be regulated, under the Constitution, with a due regard to the rights and interests of the slaveholding States, which the Constitution purports to secure. Of the sixty or seventy States of which our Union ought, by the proper fulfillment of these conditions, to be composed, the greater number by far must, even under circumstances the most favorable to the southern portion of our country, become non-slaveholding States. Through the operation in part of climate, in part of social affinities and in part of political causes whose effect has already been determined, it appears inevitable that the number of non-slaveholding States will—in the proportion of nearly two to one—exceed that of the slaveholding. With a view to this inevitable future, does the chairman of the Committee on Territories expect the peace and harmony of our Union to be preserved, unless the future legislation of the country can be conducted, on the principles recommended in the President's message, with a just regard to the rights of such of our sister States as are thus destined to find themselves permanently in a minority, and, for purposes of self-protection, must naturally look with jealous anxiety upon every exercise of doubtful powers, and every unnecessary exercise of acknowledged powers, by a dominant majority?

As I am not disposed to look upon the dark side of the picture, I have no serious fears of the future. But, deplorable indeed would be the contemplation of the future, if our administrative statesmen were to exercise the functions of government in that retrogressive order which we have witnessed in the discussion of to-day; contenting themselves with dwelling upon the memory of small things of the past, instead of considering the great exigencies of the future. We may hope that the Committee on Territories, notwithstanding their chairman's unpromising preface of their future works, will be duly sensible of the paramount importance of providing for the general interest, in view of these great exigencies. But, as their chairman has occupied the attention of the committee in the contemplation of by-gone events only, and as he has not, even in thus dwelling upon the past, manifested an accurate knowledge of the history of the former legislation of the United States upon the subject of slavery in the Territories, I propose to devote the residue of the hour allotted to me by the rule of the House to reviewing briefly the history of this legislation so far as may be necessary for the development of the leading moral and political principles which have constituted its foundation.

The ultimate practical proposition which I desire

to state as the result to which my remarks will tend, is, that when, after the treaty of 1848 with Mexico, it became incumbent on the Congress of the United States to legislate as to our possessions acquired under that treaty, there was a moral and political necessity to choose between two alternatives. One alternative was to extend to the Pacific ocean the line of the so-called Missouri restriction; thus making the latitude of 36° 30′ the division between the non-slaveholding and the slaveholding territories on both sides of the Rocky mountains. The other alternative was to regard the restriction as wholly abrogated and annulled eastward as well as westward of the Rocky mountains. To state the proposition more briefly, in another form: Justice required that the restriction should not be maintained eastward of those mountains if it could not be extended westward of them to the Pacific ocean.

A preliminary proposition of fact, established, as I think, by the legislation of which I desire to present a connected review, is, that the United States, in exercising their duty to legislate for the Territories as the *common property of the several States* held in trust for their *common benefit*, have regarded the term "common benefit" as admitting of a twofold application, or definition, so far as the subject of slavery was involved. According to the less complex and less questionable of these definitions the trust might be fulfilled by abstaining wholly from legislation on the subject of slavery during the territorial condition of the country. According to the other definition, if a partition of the territory between the slaveholding and the non-slaveholding population were required in order to promote the common benefit, and such a partition could be carried into effect in a manner mutually beneficial, the power of making it might be exercised by the United States. The territorial settlers would, in either case, be at liberty, by their constitutions when framed, to regulate the subject of slavery definitively for themselves. During their territorial condition, unless a *mutually beneficial* partition of the Territory could be effected, Congress has abstained from legislative interference with the subject.

Many statesmen of the highest eminence have denied—many others have doubted—the constitutional power to make an effectual partition of this character. On the other side of the question, some of our distinguished statesmen have always contended that Congress has the constitutional power to exclude slavery absolutely from all the Territories. A large number of those who have recognized the existence of this supposed *legal* power of total exclusion, have, however, admitted that the power could not be *rightfully* exercised; conceding that a fraudulent abuse of such a power would be committed in any exercise of it for the benefit of the proprietary owners of one portion of the Territory to the total exclusion of the proprietors of the other portion. The same reasoning would recognize the immorality and injustice of an unequal or disproportional partition. These were abstract questions, upon which statesmen have differed, and may continue to differ. But, as a practical truth, it will be shown, before I have concluded my remarks, that no act of legislation has ever been passed upon the principle of total exclusion of the people of the slaveholding States from the enjoyment of their property in slaves within the Territories. Until after the treaty with Mexico in 1848, there had never been any legislation for the partial exclusion of this property upon any principle other than that of a partition mutually beneficial. An apprehension in the minds of the people of the slaveholding States, that a departure from this practice had been threatened by the legislation of 1850, was removed by the salutary legislation of 1854, which happily quieted their minds upon the subject.

In matters of statesmanship it is often unwise to play the part of mere lawyers. We should, of course, never violate the law. But the question of *right* is often quite independent of that of legal *power*. It is by no means true that every power which can be *lawfully* exercised may be *rightfully* exercised. There is nothing in the Constitution to prevent the Government of the United States from wrongfully exercising many most pernicious powers. Their exercise, even against the spirit of the Constitution, might be within the scope of the powers which the Constitution itself confers. Thus a standing army of a million of men can be raised under an act of Congress in time of peace; and if the soldiers be not quartered on the inhabitants, the act would be lawful under the Constitution. Yet it would be manifestly against the spirit of the Constitution. No lawyer would question its validity; but an honest statesman would revolt at its iniquity, and might counsel revolution itself as preferable to submission. So, if we look *merely* to decisions of the Supreme Court of the United States, a corporate body of speculators, under the name of a bank, may be constituted by Congress the fiscal agents of our Government. But no American statesman of the present day—whatever may be his opinion on the *legal* question—contends that the fiscal power of the State can be *rightfully* placed, in this manner, for a number of years, beyond the control of those

organs of government whose authority is dependent upon the exercise of the elective franchise in the several States, and whose functions are determined by the Constitution. These examples, which might be multiplied, suffice to show the inconclusiveness of the general reasoning of those who assume that whatever is legal is, therefore, necessarily rightful in a moral or a political point of view, and of the reasoning in particular of those who, conceiving the total exclusion of slaves from the Territories to be lawful, assume that such exclusion is, therefore, necessarily rightful.

Before concluding my remarks I hope to show that such total exclusion would not only be immoral and unjust, but would likewise, in a legal sense, be unconstitutional. I postpone for the present this demonstration, because it may be made incidentally during the historical review of the past legislation which I propose to present.

Before entering upon these historical details, I desire to state succinctly the reasoning upon which many statesmen who think the constitutional power of Congress over the Territories limited by the trust under which they are held for the common benefit of the several States, are, nevertheless, of opinion that legislation which, in effect, divides the Territories between the people of the non-slaveholding and those of the slaveholding States, is consistent with, and authorized by, this trust.

Their argument has been, that any territorial possessions, owned in common by private or by public proprietors, may be enjoyed for their common and mutual benefit in either of two modes; firstly, may be held in common and undivided, with an equal participation by every owner in all the parts; secondly, may be justly and equitably divided by a partition. Some, who, professedly, were strict constructionists, stated the question to be, primarily, whether, in parceling out our Territories for the common benefit, they *could* be enjoyed in common without a relative, if not an absolute, *necessity* of making a partition. It was, they said, a lamentable truth, but a truth which no man could venture to deny, that the slaveholding and the non-slaveholding population could not coexist conveniently, if at all, under one and the same local government. Upon this allegation they based their argument, that without a partition there could be no practical equal participation in the benefits derivable from our ownership of these territorial dependencies.

On the one hand, the incompatibility of any prosperous coexistence of the two kinds of population under the same local government, was fully acknowledged before our Constitution was framed, and at the time of its formation. It has been recognized ever since, and, as we cannot but fear, must continue to be acknowledged until after the condition of the Territories, with reference to this question, shall have been permanently determined, and placed beyond the range of any possible congressional action. These considerations of relative necessity go very far to sustain the argument in favor of an inherent power in the General Government to make a partition of the territorial dependencies.

On the other hand, in support of the opposing argument, it has been urged that, according to sound political rules of construction of the Constitution, a power not expressly given cannot, from any relative or even absolute necessity, be implied; and that this, as a power, arising from implication alone, must, therefore, be excluded.

By the legislation of Congress in 1850 and 1854, the question is rendered practically obsolete, except as its investigation may shed light, historically, upon prior constitutional provisions and legislative enactments. A recurrence to the subject is however indispensable in every stage of this historical investigation.

The difficulty which such a partition might be expected to remove occurred upon the adoption of the Constitution of the United States. It was remedied, as I will hereafter show, by means of a partition made, we may say, cotemporaneously with the adoption of the Constitution. After the lapse of nearly the third of a century, the difficulty recurred as to the territory ceded by France. After controversial agitation, an attempt was made to remedy it by means of a partition of this territory. This was a partition peculiar in its character, to which I will have occasion likewise to refer again. After another interval of a quarter of a century, in order to prevent a like difficulty from occurring in the case of Texas, there was an extension of the supposed principle of the former partition. The *principle* of these acts was clearly that each successive new acquisition of territory should be shared with as close an approximation to equal or proportional benefit to the different sections of the Union as might, under the circumstances, be practicable.

The mode in which the partitions had been successively made, was always, in form and in effect, beneficial to the non-slaveholding States. From one portion of the territory slavery was, in each case, by the language of the law, excluded absolutely, while slavery was to exist in the other portion, or to be excluded from it, as its inhabitants might constitutionally determine.

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After the Mexican war, an attempt was unsuccessfully made to apply again the principle of these partitions to new territorial acquisitions. This attempt failed, because, as I will presently have occasion to show, local considerations rendered the principle inapplicable. We were driven by necessity to adopt here the nominal principle of common possession with common enjoyment. But as the Mexican laws locally in force had excluded slavery from these territories, the application of this principle to them was illusory so far as any possibility of participation in their further settlement by slaveholders might be concerned. Property in slaves was thus, in effect, excluded wholly from their limits. The principle of the former partitions having become inapplicable, and slaveholding settlers having been altogether excluded from this territory, the slaveholding States were, of right, entitled to an indemnification for their loss if it could be afforded by giving to them access, with their slaves, to other territory. If such access could be given without any violation of existing rights of others in such territory, there could be no just cause for its denial. This was true, although their exclusion from the territory acquired from Mexico might have been the result of unavoidable causes, for which the United States were not responsible. Equal participation in the beneficial enjoyment of this territory having become impossible, and the whole benefit of its enjoyment having, from the first, enured to one class of its common proprietors, the other class ought to receive an indemnification from some other portion of the common property. This principle was the moral basis of that praiseworthy legislation of 1854 which the chairman of the Committee on Territories has most injudiciously denominated a "conspiracy against freedom."

To the northward of the latitude of 40°, climate and other considerations make slavery practically out of the question. To the southward of 36° 30', on this side of the Rocky mountains, except in that portion of what was taken from Texas and annexed to New Mexico in 1850, the institution of slavery is now established. From all parts of our country to the westward of the Rocky mountains it is excluded. This exclusion is probably permanent. The Territory of Kansas, lying westward of the State of Missouri, between the parallels of latitude of 37° and 40°, is, therefore, now the only space in which the question of slavery is to be regarded as of any practical importance. The question is, whether the force of a numerical majority from the northern States can be rightfully exercised in order to deprive our southern brethren of the privilege of free access, with their slave property, to this Territory—a Territory, be it remembered, within degrees of latitude which, to the eastward of its limits, include already five slaveholding States, and much more land of slaveholders than land from which slavery is excluded.

Let us now trace the history of these successive partitions.

The first partition of territory was made by a series of acts, in the years 1787, 1789, and 1790, followed by an act of 1802. The power of the Confederacy which preceded our present Constitution, if determinable solely by the terms of the Articles of Confederation, was, perhaps, not greater on the subject in question than that of the Confederacy subsequently organized under our present Constitution. But there was this difference: Under the old Confederacy, members of Congress were in constant communion with the Legislatures and executive governments of the several States which they respectively represented. They constantly acted under direct legislative instructions. As representatives of the several States, they might be, and often were, authorized by their respective Legislatures, to perform acts of sovereignty—exercising a delegated authority not unlike the treaty-making power, and binding the States by compacts with the confederated Government. It is difficult to measure the legal extent of their power, when exercised under the sanction or acquiescence of the States. Their action, when ratified by the States, especially when the States were unanimous, might thus be the exercise of a power taking effect independently of the Articles of Confederation.

The boundaries of the United States, under the treaty of 1783 with England, included not quite eight hundred thousand square miles, of which about one half was organized into States, and the other half was composed of Territories not thus organized.

These Territories were, as we know, the subjects of successive cessions by the different States to the United States. The language in which the subjects of these cessions were defined, and the conditions on which they were received, have been too often overlooked. They were expressly cessions of both *soil* and *jurisdiction*. The twofold expression, "soil and jurisdiction," was employed in every case. The cessions were not made or received unconditionally. The States which had exacted them had, in their published

manifestoes on the subject, declared that these Territories, wrested from England as the common enemy by the *blood and treasure of all the States*, should be considered a *common property*, and should be parceled out by Congress into free and independent States. By the resolution of Congress of 1780, it had been stipulated that the unappropriated lands that might be ceded or relinquished to the United States by any particular State, should be disposed of for the *common benefit* of the United States, and be settled and formed into distinct republican States, which should become members of the Federal Union, and have the same rights of sovereignty, freedom, and independence as the other States. Under this engagement, the United States thus received the grant of the *jurisdiction* as well as the *soil* of these Territories. A solemn pledge was thus given that the Territories should be governed for the common benefit. In the debates and proceedings of the Federal convention, and of the Virginia convention, it is manifest that this was understood to mean "the common benefit" of the slaveholding as well as of the non-slaveholding States.

Before the peace of 1783, some of the States had begun the work of liberating their slaves. All the States, at the time of the Declaration of Independence, had been slaveholding, including Massachusetts, though this has in her case been denied. The original New England articles of confederation of the previous century, to which Massachusetts was a party, had contained a clause for the rendition of fugitive slaves. The law of Massachusetts, like that of the other States, recognized and protected property in slaves until the adoption of her constitution, framed during the war of the Revolution.* But at the time of the adoption of the Federal Constitution, a majority of the States—seven of the thirteen—were non-slaveholding.† The jealous apprehension on the part of the slaveholding States of an infringement of *their* equal privileges, which now exists, was at that day manifested. Those who, in the Virginia convention, opposed the adoption of the Constitution, inviting attention to the Territories, accused the non-slaveholding States of withholding from what was then the West the navigation of the Mississippi, through jealousy lest the power of the slaveholding States might, perchance, thereafter equal that of the non-slaveholding; and prophesied that the non-slaveholding States, if they retained their numerical majority, would unfairly prevent the admission into the Union of new States in which slavery might be tolerated.* The defenders of the Constitution in that convention denounced these charges against their northern brethren as illiberal and unjust.

Through menacing perils of disunion, at that crisis of our destinies, we happily passed unhurt. Through similar perils, which followed, we likewise passed. In the future such perils will probably be diminished, rather than increased. But this happy result cannot be promoted by such discourses as that of the chairman of the Committee on the Territories.

I have stated that, at the time of the establishment of our present Constitution, the area of the original States was about four hundred thousand square miles, exclusive of the Territories. Three fifths of this area was then slaveholding, and two fifths only non-slaveholding.† The Territories were together of an area nearly equal to that of the States. The partition of these Territories then made was carried into effect by successive acts, partly of the old Congress of the Confeder-

* "The Boston Gazette and Country Journal" was "printed by Benjamin Eades in Watertown." No. 1105, published on the 22d of July, 1776, contains the Declaration of Independence, and the following advertisement:

"To be Sold.—A stout, strong, healthy negro man, about 'twenty-five years of age; has had the small-pox; can turn 'his hand to almost anything; he likes farming business the 'best; he is well clothed. The pay may be on interest, 'giving security. Inquire of the printer."

The paper is in the possession of Colonel Peter Force.

† It would have been, with more accuracy, said of some of these seven States, that they had passed laws for the prospective gradual abolition of slavery within their limits; and of others, that the number of slaves within their limits was very small, and that the views and policy of their inhabitants were generally opposed to slavery.

Pennsylvania, and the six States to the northward and eastward of her, were, for practical purposes, regarded as non-slaveholding at the time of the adoption of the Constitution. (See the next note.)

* In the debate of the 23d of June, 1788, on the third section of the fourth article of the Constitution, Mr. Grayson said: "Mr. Chairman, it appears to me, sir, under this sec-'tion, there can never be a southern State admitted into 'the Union. There are seven States, who are a majority, 'and whose interest it is to prevent it. The balance being 'actually in their possession, they will have the regulation 'of commerce, and the Federal ten miles square wherever 'they please. It is not to be supposed, then, that they will 'admit any southern State into the Union so as to lose that 'majority."

† The slaveholding 243,700 square miles, composed of the present States of Virginia, North and South Carolina, Georgia, Maryland, Delaware, and *Kentucky;* the non-slaveholding, comprising the present States of New Hampshire, *Vermont*, Massachusetts, *Maine*, Connecticut, Rhode Island, New York, New Jersey, and Pennsylvania, together 164,000 square miles. The names of the new States formed within the limits of the original thirteen are here printed in italics.

The word "non-slaveholding," as used here and in the text, applies to all the old States whose known policy was adverse to the indefinite continuance of slavery within their limits, whether it had already been legally abolished within them or not. (See the last two Notes.)

ation, and partly of the Congress under the present Constitution. This legislation gave to the non-slaveholding population about five eighths of the territorial domain. The slaveholding population retained only about three eighths. The extensional area of the slaveholding and non-slaveholding parts of the Union was thus nearly equalized. There was then a cautious observance of those compacts securing the rights of the slaveholding States which the chairman of the Committee on the Territories would now tear to tatters and scatter to the winds.

The ordinance excluding slavery from the Northwestern Territory was passed by the Congress of the Confederation in July, 1787. In August, 1787, a cession of other territory was made by South Carolina, and accepted by the Congress of the Confederation without any mention of slavery. In September, 1787, the Constitution was subscribed by the Federal convention. The cession of 1789, by North Carolina, of the territory lying westward of her limits, was accepted, in 1790, by the first Congress under the Constitution. It contained the remarkable words:

"*Provided always*, That no regulations made, or to be made, by Congress shall tend to emancipate slaves."

This territory lay wholly to the southward of the line of 36° 30′—the old Virginia boundary—which, under the North Carolina charters of 1677 and 1729, had originally extended to the Pacific ocean, and would still have extended to that ocean if the treaties of 1763 and 1783 had not limited our territory on the westward by the Mississippi.

These differing enactments of 1787 and 1790 were thus applicable to different portions of the territorial domain—the slaveholding southward of latitude 36° 30′, the non-slaveholding almost wholly northward of 39°, and none of it extending southward as far as 37°. These enactments, together, effected the first statutory partition of territory ever made with reference to the question of slavery. The cession by North Carolina was followed in 1802 by a cession of territory made by Georgia, under a condition which secured the continuance of slavery. When the ordinance of 1787 was passed at Philadelphia, the Congress of the Confederation which enacted it, and the convention which framed the Constitution, were both in session there. The members of both bodies were, of course, in frequent communication with one another. The ordinance for the Northwestern Territory passed the Congress by a unanimous vote of the States. In 1784, this Congress had nevertheless rejected a proposal for the exclusion of slavery within this Territory. These apparent diversities in congressional legislation are all reconcilable with one another, if we regard the successive acts as together constituting a partition of the Territory with reference to this question of slavery. They are otherwise altogether inexplicable.

It is, here, material to bear in mind that the Constitution intervened between the ordinance of 1787 and the acceptance, in 1790, of the cession made by North Carolina. This Constitution—the charter of our title to the most important political blessings, and to many of the most highly valued social as well as domestic blessings which we enjoy—gave to Congress no control of the subject of slavery. It nevertheless provided, as the Supreme Court of the United States has said, for the most complete recognition of the title of the inhabitants of the slaveholding States to their property in slaves. The Constitution treats slaves as persons and as property; regarding them as inferior persons, who were subjects of private property. As persons, they were not to be computed in the enumeration of inhabitants otherwise than in view of the political and individual rights of their proprietors. In that computation it provides that five of them shall be counted as equal to only three whites. While it calls them "persons," it thus recognizes their inferiority as a race. It treats them as subjects of property, providing that the direct taxation shall, with reference to them, be in the same ratio as the representation—three to five. It provides for the recaption and restoration of fugitive slaves, as property, to their owners. It treated them as a subject of commerce—a commerce which Congress might regulate, *except with reference to their importation from foreign parts into States of the Union desiring to increase their slave population.* This importation was left open to the people of these States, by an express exclusion of the power to prohibit such importation, for twenty years.

The purpose of this clause of the Constitution was, that no portion of the slaveholding part of the country should be left at liberty to determine, arbitrarily, by a selfish standard, the future value of slaves in the then unsettled territories of the South, or to prevent their introduction into those territories. The States of South Carolina and Georgia would not have adopted the Constitution if this provision had been omitted.

The spirit of the provision which prohibited congressional interference with the foreign slave trade until 1808, was manifested in another clause of the Constitution, which, while it gives to Congress and the States, under certain conditions, the

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power to amend the Constitution, excepts this temporary right of importing slaves from Africa. In order that their proportional number and value in different parts of the slaveholding country might be equalized, this clause was expressly excepted from the operation of the clause authorizing amendments. In a like spirit, the provision that no capitation or direct tax should be laid otherwise than in proportion to the census by which five slaves were to be enumerated as three persons, was permanently excepted from the operation of the clause authorizing amendments. This clause, moreover, while it allowed two thirds of each House of Congress to suggest an amendment to the Constitution, required a concurrent vote of three fourths of the States in order to pass it. This was cautiously provided, lest the greater number of the non-slaveholding States should ultimately overpower the slaveholding.

A clause in the Constitution conferring upon Congress the power to *dispose of*, and make all needful rules and regulations respecting, the territory or other *property* belonging to the United States, has been supposed by some persons to confer upon Congress an unconditional sovereign political, as well as proprietary, jurisdiction over the Territories. Under this clause, it has, therefore, been assumed by some persons that Congress has the *power*—whether it has or has not the *right*—to exclude slavery wholly from the Territories. If this clause conferred any other than a *proprietary* jurisdiction, it would not have exempted the United States from their obligation, incurred under the resolution of 1780 and their acceptance of the cessions made under it, to exercise their jurisdiction over the Territories for the common benefit of the slaveholding and non-slaveholding States. Another clause of the Constitution provided that all engagements entered into before the adoption of the Constitution should be as valid against the United States under the Constitution as against the Confederation. In accepting the cessions of both *jurisdiction* and soil upon the conditions provided in the resolutions of 1780, the United States had entered into an *engagement* to abide by those conditions.

But, according to the most approved interpretation of the Constitution, the clause respecting the Territories gave to Congress no other than a proprietary jurisdiction. This appears by the context in the particular clause itself, and by contrasting its provisions with those of the clause conferring on Congress, in very different language, the power to exercise *exclusive legislation* over such district of limited dimensions as might, in a prescribed mode, become the seat of Government, and to exercise like authority over places purchased with the consent of the States for certain prescribed purposes. This contrast of language authorizes us to distinguish the words applicable to proprietary, from those applicable to general political jurisdiction. The contrast is further strengthened by recurring to the terms of the cessions of the territories to the United States. These cessions, it will be remembered, had expressly transferred the jurisdiction, as well as the soil. On one occasion, almost thirty years ago, the Supreme Court of the United States appear to have regarded as immaterial the inquiry whether the general political jurisdiction of Congress over the Territories was derived from the clause in which the proprietary jurisdiction is defined, or was deducible from other sources of power. Whatever may have there been its immateriality in a legal point of view, there can be no doubt of its importance as a question of statesmanship involving political considerations. As a purely legal question, the preliminary distinction between the proprietary disposal of the public domain and the exercise of general political sovereignty, was fifteen years later, more particularly considered by the Supreme Court in the investigation of the title to the New Jersey shore oyster fisheries. A distinction then established has been since repeatedly recognized.

At the present day, few constitutional lawyers would venture to rest the political jurisdiction of Congress over the Territories exclusively upon this clause of the Constitution. Fewer constitutional jurists would contend that either under this clause, or independently of it, Congress has the power by legislation to exclude slavery from *all* the Territories. Of those few who might still recognize the existence of the *power* on grounds purely legal, a very small number probably would contend that the exercise of such a power in its utmost extent would be *rightful*. From the operation of these remarks, if some of the members of the present Congress are to be excepted, this is attributable to peculiar causes already mentioned, which have brought together an unusual number of members who misrepresent their constituents, and entertain opinions to which probably few men in Congress will give utterance after the 3d of March, 1857.

The partition of the Territories made by the acts which immediately preceded and followed the adoption of the Constitution, was therefore, in part, an act of the sovereign States under the old Confederation, and wholly their act so far as any prohibition of slavery was involved. By

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this act of the old Congress the Northwestern Territory was placed under different regulations from the remaining Territories. Slavery was excluded. But how was it excluded? Not under the Constitution of the United States, which had not then been engrossed by its framers, but by the unanimous vote of the *States* in the Congress of the Confederation. The result of the partition of which this ordinance was the first act, was, as I have already said, that the slaveholding States and the Territories which remained open to the introduction of slavery were, together, nearly as extensive as the non-slaveholding States and the Northwestern Territory. The difference, less than eighteen thousand square miles, did not exceed twenty-three one-thousandths of the whole area of our country at that day.

The Constitution conferred upon the Congress the power to make all laws necessary and proper for carrying into execution the powers vested by the Constitution in the Government of the United States, or in any of its Departments; and contained a provision for the admission of new States into the Union by the Congress. This provision for the admission of new States could not be carried properly into execution without an organization of territorial governments, to subsist until proper times for the formation of new States. The original authority for the organization of territorial governments, under the Constitution, is not safely deducible from any other than these two clauses.

Soon after the commencement of the present century, we made, under the treaty with France, our first acquisition of new territory. The partition of this territory made or attempted by Congress in 1820, is the next subject which requires consideration.

This territory included originally nearly, if not quite, a million and a half of square miles, bounded by the Rocky Mountains, the Rio Grande, Gulf of Mexico, and Mississippi river, and a line extending northwardly, as authorized by the treaty of 1783, to the Lake of the Woods. By the treaties of 1818 with England, and 1819 with Spain, its area was reduced to perhaps less than one million one hundred thousand; say about one million seventy thousand square miles. Of this territory there were, to the northward of the latitude of 40°, perhaps about seven hundred and twenty thousand square miles; between 40° and 36° 30′, about two hundred thousand; and southward of 36° 30′, about one hundred and fifty thousand. If, to the last amount of one hundred and fifty thousand, we add Florida, acquired from Spain in exchange for Texas, under the treaty of 1819, the area of territory to the southward of 36° 30′ was increased to about two hundred and ten thousand, making the whole area of our acquisitions from France and Spain, in this direction, perhaps, about one million one hundred and thirty thousand square miles. If these estimates are correct, the intended operation of the attempted partition of 1820, called the Missouri compromise, was to exclude slavery from about eight hundred and fifty-five thousand square miles, or about three fourths of this territory, and to permit its existence within the remaining fourth, containing about two hundred and seventy-five thousand square miles, including Florida and the State of Missouri.

The whole area of the United States was then about one million nine hundred and twenty thousand square miles. If this partition had been carried into effect, slavery would have been finally excluded from about two thirds of this whole quantity, say from about one million two hundred and sixty thousand square miles, and would have continued to exist in the remaining third part, or six hundred and sixty thousand square miles.

This partition would have been less unequal in value than in quantity. The slaveholding country embraced all the territory capable of producing the great staple on which our national wealth is mainly dependent, all our coast on the Gulf of Mexico, and a large proportion of the Atlantic coast. The slaveholding States were content with the arrangement, if it could have been carried into effect according to its spirit as well as according to its literal import.

Texas was restored to us in 1845. In 1846 our title to Oregon, including the present Territory of Washington, was defined and ascertained in such a manner as to render it an available possession. This Oregon Territory, with Texas, embraced an area which may be variously estimated, as the western boundary of Texas may be variously defined. Assuming that Texas and Oregon included seven hundred and fifty thousand square miles, about four hundred thousand were to the northward and about three hundred and fifty thousand to the southward of the old Carolina and Virginia line of 36° 30′. On the assumed principle of the Missouri compromise, this line had been carried out through Texas by the act of annexation of 1845.

On the ratification of the treaty with England in 1846, the first year of our war with Mexico, our whole country thus embraced nearly, if not quite, two million seven hundred thousand square miles. Slavery was then permitted in scarcely more than a million of square miles. The slaveholding States were, however, content to abide by the principle of the Missouri compromise.

This acquiescence of the southern States was generally regarded as having obviated certain legal difficulties which would probably have prevented a compulsory enforcement of this principle. The act of 1820, in which the so-called compromise originated, left the territory south of latitude 36° 30′ unrestricted, so that it might be organized into States with or without slavery, as the inhabitants might afterwards constitutionally determine the question for themselves. Northward of that line of latitude, slavery was, by the act of 1820, in express terms, "forever prohibited." The signification of this word "forever," if it could have been doubtful, was determined in its broadest sense by the Texas annexation act of 1845, which, after enacting that such States as might be formed out of the portion of Texas lying south of 36° 30′ north latitude, commonly known as the Missouri compromise line, should be admitted into the Union with or without slavery, as the people of each State asking admission might desire, contained these additional words:

"And in such *State* or *States* as shall be formed out of said Territory north of said Missouri compromise line, slavery or involuntary servitude shall be prohibited."

Whether such an enactment would have been constitutionally valid within a Territory before its organization as a State, is a doubtful proposition, as I have endeavored to show under a former head of my remarks; but that it was altogether unconstitutional in its application to a State, or to a Territory cotemporaneously with its organization or recognition as a State, is a proposition which has, at least three times, been recognized by the Supreme Court of the United States, and has, in principle, been once, if not twice, directly adjudicated.

The controversy which resulted in the act called the Missouri compromise, nevertheless, originated in an endeavor of representatives in Congress from the northern States to exclude slavery from Missouri at the time of her admission as a sovereign and independent State into the Union.

I am not one of those who find any difficulty in recognizing the origin of the power of Congress over *newly-acquired* territory, or in defining the limitations to the exercise of that power. If it were necessary to refer to the successive treaties under which our territory of this description has been acquired, they contain all that would be requisite for the grant of the power, and for its definition and limitation. In the French cession, in the Spanish and in the Mexican, we find a provision, substantially, though not literally, the same in each, to the effect that the inhabitants of the newly-acquired territory shall, as soon as may be consistent with the principles of our Government, be incorporated into the Union, and admitted to the enjoyment of all the rights and privileges of citizens of the United States, under the Constitution; and that, in the mean time, their rights of property, and certain other specified rights, shall be maintained and protected. Independently of these provisions of the treaties, and independently of the treaty-making power under the Constitution, the authority to establish a government within their limits would result from the mere fact, that, for all external purposes, the United States are a single nation, and, like every other nation, liable to the loss, and capable of the acquisition, of territory. If we have the power to acquire territory, the incidents of its acquisition under the laws of nations, must, of course, attach themselves to its acquisition. We may therefore govern them under the Federal Constitution by congressional legislation.

But when we come to perform the office of legislators in Congress, we are bound, not merely by the treaties to which I have referred, but likewise by the provisions of the Constitution of which the language of those treaties is declaratory, to exercise this legislative power for the *common benefit*. Otherwise we cannot rightfully exercise it at all. The principles by which congressional legislation as to newly-acquired territories ought to be regulated are, therefore, the same as those which were applicable to the old Territories, acquired as common property under the acts of cession. The fundamental reason, that they were acquired by an expenditure of the common blood or common treasure of all the States, is assuredly applicable to the subjects of every one of the successive cessions.

These questions had slumbered peacefully from the adoption of the Constitution of the United States until the organization of Missouri as a State was in contemplation, when, in an evil hour, they were unwisely agitated, and unfortunately became sectional questions.

Citizens of non-slaveholding States, to whom

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the question of slavery was a mere abstraction, who had studied it from a distance, and to whom it was of little more importance than that of the burning of Hindoo widows in India, influenced by speculative notions of humanity, agitated the questions in town-meetings and other informally-convened assemblages, without even attempting, in the outset of their proceedings, to discuss closely the provisions of the Constitution of the United States. Representatives in Congress, under instructions derived mainly from such local assemblies, rushed headlong, without adequate preparation for the contest, into the unfortunate Missouri controversy. They were met in Congress in 1819 and 1820, by southern statesmen, to whom the controversy involved a domestic question which, to them, was one of every day's experience. It was the more familiar to them, as it was vitally important to their political, and social, and proprietary interests. They treated the subject as men conversant with all that was involved in it. What was the result? Northern statesmen, though fully able to cope on other questions with those with whom they found themselves competitors, were, by the force of reason, compelled to yield. The Constitution was too strong to be overborne.

The more judicious of the northern members, to relieve themselves from the embarrassment in which disobedience of, or continued obedience to, the requirements of their constituents would have involved them, appealed to the generosity of their southern brethren on this floor. The late Henry Baldwin, a man of gigantic intellect and unsurpassed industry of investigation, who was equaled by few in practical sagacity—whose name has not of late been mentioned with the praise due to him for his useful mediation in this business—took a leading part in these efforts to adjust this first sectional controversy. For its adjustment, northern men invited their brethren of the slaveholding States to agree to a partition by means of which this question should be settled. It had been found that the attempt to impose the restriction on Missouri *as a State* was not only morally wrong, but legally unconstitutional. The compromise thus proposed from the North was carried by southern votes, with the aid of no more northern votes than were necessary in order to pass it. That is the truth of history. Those old enough to recollect those days will concur in attesting this truth.

What was the principle of the attempted adjustment? To establish, a second time, by convention, a line by which property that could not be conveniently enjoyed in common, might be made the subject of a partition. After the northern majority of this House had been driven from the ground of excluding slavery wholly from the limits of the French cession, originally assumed by them, there was a warmly-agitated controversy where the line of the proposed division should be drawn. Another deceased patriot—a distinguished soldier and statesman—afterwards President of the United States—for whom those who, like myself, differed from him in politics will never cease to entertain the highest respect and veneration—proposed a line coincident with the present northern line of Missouri to the northward of that of Kansas, as the limit between the slaveholding and the non-slaveholding territory. Another statesman, from the North, had, in an earlier stage of the controversy proposed the old line of 36° 30′. When the adoption of this line had been thus proposed by him, it had been intended as a means of excluding slavery from Missouri as well as from the Territories westward of her borders. Finally, so far as the State of Missouri was concerned, law and reason prevailed. Her constitutional right to regulate her own domestic institutions was reluctantly acknowledged. The partition was made by a bare majority. The line of 36° 30′, to the westward of the State of Missouri, was made the division in terms which I have already quoted. That it was, in its greatest attempted extension, an illegal enactment is now universally admitted. It was, however, acquiesced in by the people of the southern States, who were the only parties who could reasonably have objected. Whether it was founded in law or not, they abided by it contentedly.

Thus the question of slavery in the Territories, with occasional agitation from the North, but never from the South, rested until after we had acquired new territory from Mexico.

On this occasion the Representatives of the slaveholding States in Congress, acting with perfect good faith, agreed unanimously in a proposal to extend the old division-line of 36° 30′ to the Pacific ocean. There was, however, a valid objection to this proposed extension of that line westward of the Rocky mountains. Governments had been previously organized to the westward of those mountains. Former local institutions under these governments were entitled to protection. By these institutions slavery had been excluded from these territories. To have changed their condition, in this respect, would

have been wrong. For this reason the proposal of the southern Representatives, though otherwise perfectly just and reasonable, was rejected by the Congress of 1850.

California became a member of the Union, as a non-slaveholding State, through the legislation of that year. This completed the exclusion, of slavery from our portion of the Pacific coast extending through seventeen degrees of latitude, of which about a fourth was to the southward of 36° 30′.

Through the same legislation, the territorial governments of Utah, lying to the northward, and of New Mexico to the southward of 36° 30′, were organized on the nominal principle of permitting the inhabitants to determine their domestic institutions for themselves. Those institutions already excluded slavery.

This, therefore, completed its exclusion from the whole country acquired from Mexico. This country included California, Utah, and New Mexico. Its whole area westward of the Rocky mountains was about half a million square miles. To the Territory of New Mexico, the Mesilla purchase, nearly eighty thousand square miles, was afterwards annexed. By the act of 1850, about this quantity of territory eastward of the Rocky mountains, had, with the consent of Texas, also been annexed to New Mexico. The areas of the present State of California, and Territories of Utah and New Mexico, with these two additions, are, together, about six hundred and sixty thousand square miles.

This territory, from which slavery has apparently been forever excluded by this legislation, is about equal in area to the sum of the areas of the present Territories of Kansas and Nebraska.

This brings us to the legislation of 1854.

These Territories of Kansas and Nebraska, then without any organized government, were a part of the French cession lying northward of latitude 36° 30′. For this line 37° has been substituted as the southern boundary of Kansas for local reasons connected with Indian settlements on the border. According to the letter of the Missouri compromise act, slavery was to be excluded from their limits. But we have seen that, in 1850, it had been found impossible to extend this line westward across the Rocky mountains. The old line, where it had formerly been established, eastward of these mountains, had therefore been wholly disregarded in the legislation of 1850. Thus we have seen that a portion of Texas lying southward of 36° 30′, equal, or nearly equal in area, to the seven States of Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, and Maryland, was annexed to the non-slaveholding Territory of New Mexico. Slavery had thus, in 1850, been excluded from this territory which, under the Missouri compromise, had been left open to slavery.

I started with the proposition, that the refusal in 1849 and 1850 to extend the division-line of 36° 30′ westward of the Rocky mountains, carried with it an incidental obligation to abrogate the restriction of the Missouri compromise in Kansas and Nebraska. To take from the slaveholding States all the territories westward of the Rocky mountains, and still retain for the non-slaveholding States almost the whole of the territories eastward of these mountains, would have been unjust. An arrangement mutually beneficial westward of the Rocky mountains was impossible. But Kansas and Nebraska, north of 37°, were still unsettled and unorganized. Their superficial area was, as I have said, coextensive with that of the territory from which slavery had been excluded in 1850. True, Nebraska, comprising the greater portion—not less than four fifths—of this unorganized territory, is to the northward of 40°, and therefore probably not open to settlement by slaveholders. But, in Kansas, occupying the space between 40° and 37°, there was at least the possibility of a partial equivalent for the loss by the slaveholding States of a participation in the beneficial enjoyment of the territory on the Pacific.

All that was effected, or attempted, in 1854, by the act organizing the territorial governments of Kansas and Nebraska, was to permit the settlers in these Territories to regulate for themselves their own domestic institutions, including the subject of slavery. The concurrence in opinion of statesmen who united in this restoration to the people of the slaveholding States, in one quarter, of what they had been deprived of in another quarter, is denominated by the chairman of the Committee on Territories a conspiracy against freedom!

The Missouri restriction, "a precedent that had run in a storm," was no longer morally, if it had ever been legally, in force. It had been wholly disregarded in the legislation of 1850. But it was upon the statute-book still unrepealed.

To remove all doubt upon the question whether this restriction was to be legally in force in these

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Territories, the act of 1854, after giving to the Constitution and all laws of the United States not locally inapplicable, the same effect within their limits, as elsewhere within the United States, excepted the Missouri restriction act; declaring it inoperative and void, as inconsistent with the principle recognized by the legislation in 1850 of non-intervention by Congress with slavery in the States and Territories. It was further declared to be the true intent and meaning of the act not to legislate slavery into, or exclude it from, any Territory or State, but to leave the people of the States and Territories perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States.

In the controversial discussion of the bill in the last Congress, a question arose whether this part of it was not equivalent, under the terms of the cession by France, to a positive restoration, in these Territories, of the institution of slavery as it had existed in the French colony, of which they had been a portion. If this effect had resulted from the act, the settlement of Nebraska would have been injuriously retarded. This might not have been the case to the same extent in Kansas. The difficulty was removed by the proposal of a Senator from a slaveholding State, adopted by the votes of southern as well as northern Senators and Representatives, to introduce into the bill a provision that nothing contained in it should be construed to revive or put in force, in either Territory, any law or regulation that may have existed before the date of the Missouri restriction—protecting, establishing, prohibiting, or abolishing slavery. With this proviso the act was passed.

Some critical objectors have suggested that this act was founded on the principle of what they call *squatter sovereignty*. This term, when applied to the administration of the *organized* government of a Territory, has no proper practical meaning. Those who thus misapply the term, treat the Territories as underlings of the British Board of Trade, and some of the superiors of the Board, were, before the Declaration of Independence, in the habit of treating the governments of the American Colonies. Adventurers, who assume to exercise political or proprietary rights independently of any recognized organization of government, may be denominated squatters. But the denomination is not applicable to settlers under the jurisdiction of an organized government, merely because it is a government of a delegated or subordinate character, or because the settlers are originally few in number.

The organization of these governments had already been too long delayed. The paths of great avenues leading westward in the direction of the Pacific ocean were to be laid out within and across their borders. Other circumstances indicated the necessity of expediting their organization. There were, it is true, but few settlers already within their limits. The reason was, that pioneers who desire to make permanent and useful settlements in the wilderness, are not, at the present day, willing to cross the frontier until they are assured of the protection and security of a regularly organized government. They compose a class of men altogether different from those of a former generation, who were, less improperly perhaps, denominated *squatters*. There are now very few squatters upon any part of this continent. A majority of the men of the last Congress were practically conversant with the subject of the settlement of the Territories. They knew that thousands, ready to become settlers, had long been waiting to cross the line of these Territories, until their governments were organized. They knew that these men were not of a class to become squatters, but that they would never enter the Territories until they would be at liberty, when there, to enjoy the blessings of self-government, to such reasonable extent, at least, as might enable them to regulate their own domestic institutions, without congressional control or interference.

The whole of what is now comprised under the names of Kansas and Nebraska had, until 1854, been regarded as a single Territory, and had borne the name of Nebraska. The present chairman of the Committee on Territories complains because, in that year, Kansas was carved out of this Territory and separately organized. His complaint is two-fold: first, that the whole of this vast country was not organized under a single territorial government; next, that if two such governments were organized, the line between them was not the Platte river instead of the parallel of latitude of 40°.

To this two-fold complaint there is a ready answer. The portion of the Territory lying southward of 40° was the only portion in which slaveholding emigrants could find suitable sites for settlement. Between 40° and the latitude of the southern boundary of Kansas, slavery already existed in Missouri, Virginia, Kentucky, Maryland, and Delaware. North of 40° no slaveholder could have been expected to establish

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himself. We have already seen that if the whole had formed a single Territory, the area of the portion to the northward of 40° would have been about four times that of the portion to the southward. Such an organization would have been a fraud upon the slaveholding States. Emigrants from their country would inevitably have been outnumbered by a majority from the non-slaveholding country.

Should Kansas become a slaveholding Territory, and ultimately be divided into two or three slaveholding States, Nebraska and Minnesota must nevertheless be divided into ten or eleven non-slaveholding States. It should be our hope and prayer, that these future States may be organized in such a manner that their inhabitants may retain the good-will and fellowship of the people of the slaveholding States, and maintain the stability of the Union. What is our security for the preservation of the Union in peace and harmony, when the chairman of the Committee on Territories designates legislation by which the principles of the Constitution are honestly carried into effect, a conspiracy against freedom? What would be our security, if a majority of both Houses of Congress were to sympathize with his slanderous insinuations against an honored President of the United States, for carrying out and sustaining the constitutional rights of the slaveholding portion of our Union? Are we to see the policy upon which our progress has hitherto depended abandoned, under a suggestion that all which tends to secure a common right of enjoyment of property to all sections of the Union alike is a conspiracy against freedom?

Those impracticable casuists and those transcendental optimists, who, in a mad crusade against slavery, would violate the guarantees of the Constitution, and wholly disregard obligations of comity between the confederated sovereignties of our Union, are happily few in number and feeble in influence. This was at the last presidential election attested by the votes of twenty-seven of the thirty-one States cast in condemnation of their pernicious dogmas, as it will again in like manner be attested before the close of the present year. Their force, composed in part of intriguing demagogues who take advantage of every passing opportunity to inflame the passions of the hour for the promotion of their selfish political designs, is also composed in part of innocently-disposed citizens who are imperfectly instructed in the principles of our constitutional frame of Government. The latter class, acting under mistaken ideas of benevolence, may be the more easily excused because the framework of this Government is, of necessity, very complicated, from the inherent difficulties of a system under which several sovereignties are, for specified purposes only, united into one, and are, for all other purposes, as distinct and independent as if no such union had been formed. Circumstances, however, from time to time compel every citizen to picture to his mind the state of things which would exist if there were no constitutional union of the States. Let these casuists and transcendentalists then suppose, under such a state of things, the case of a proposal to form a confederation of the States for certain limited purposes, recognized by all as mutually beneficial, but upon a condition that the subject of slavery be placed beyond the control of the proposed united government. They will then less imperfectly understand the position which was occupied by the framers of our present Constitution, and will be less unable to comprehend the principle of non-intervention with slavery, which they now inconsiderately condemn. They will then understand that if there were no Constitution, they would be incapable, as they now are, of intervening to alter the condition of slaves within a State; incapable, as they now are, of preventing the slaveholder from emigrating with his slaves to unoccupied wilds beyond the borders of the States; incapable of preventing him from making and maintaining settlements there, and from participating in the establishment of permanent local institutions on all domestic subjects. Those who cannot understand that the settler from a slaveholding State must then be able to participate with his fellow-settlers from non-slaveholding States in the local establishment or the local exclusion of domestic servitude as one of these institutions, must have been entranced and led captive, not by the force of reason, but by such eloquence as that of the chairman of the Committee on Territories, and his associates in the crusade against constitutional rights, which would overwhelm these most sacred rights, if a remedy could not be found in the exercise of the elective franchise.