DOUGLAS & BLACK ON POPULAR SOVEREIGNTY

REMARKS

ON

POPULAR SOVEREIGNTY,

AS MAINTAINED AND DENIED RESPECTIVELY BY

Judge Douglas, and Attorney-General Black.

BY A SOUTHERN CITIZEN.

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POPULAR SOVEREIGNTY.

THE article by JUDGE DOUGLAS, in the last September number of Harper's Magazine, on "The Dividing Line between Federal and Local Authority," and the "Observations" on it by the Attorney-General of the United States, have given to the subject renewed and additional interest. The public mind is now, probably, more than at any preceding period, specially called to consider it as one which must soon be settled, if the peace of the country is to be restored and maintained. Participating in this impression, the writer of these remarks cannot be esteemed obtrusive if he states his own opinion, and, as briefly as perspicuity will permit, the reasons on which it rests. This, too, is undertaken in no party spirit, or through any prejudice, of which he is aware, to parties or persons. The question itself is of so much interest, is so closely connected with the continuing quiet and prosperity of the country, that it would be almost desecration to deal with it with other than national and patriotic motives. It is hoped that this will be remembered and regarded throughout the discussion. Such certainly is the wish and design of the writer. Nor will he refer, in regard to it, to any inconsistencies into which our statesmen, past or present, may have fallen. These prove nothing in support either of the opinion discarded or adopted. They only serve to subtract from each whatever of authority may belong to the name of its author. Nor do they impeach his integrity. Public virtue by no means consists of uniform consistency. "The wise man sometimes changes his opinion, the fool never." Time and

reflection are generally but misapplied, if they fail to discern past errors; and honesty does not exist, if, when discovered, they are not corrected. There are few, either constitutional or merely political questions of general importance, upon which our statesmen have not entertained, and at different times acted upon, different opinions. The constitutionality and expediency of a protective tariff, the authority to legislate over internal improvements, the power to establish a national bank, to prohibit slavery in the territories, the propriety and policy of bringing executive influence to bear upon elections, Federal or State, the removal from office of faithful officers, for conscientiously maintaining their own political opinions, and the more modern doctrine of rotation in office, that personal friends and dependents may be specially provided for, (both not only pernicious to the public service, but productive of deep and enduring hostility to the executive himself,) are all of them instances in which living statesmen, high, too, in public confidence and station, have, at various periods of their career, avowed and been governed by antagonistic views. Charity, at least, should persuade us that, however mistaken, patriotic, not selfish motives, must have induced the change. The fact certainly is a fixed historical one, but, however it diminishes faith in the judgment of such men, and may seriously affect the authority and fame of their names, the honor of the country, which in some measure is bound up in their own, it would be unjust to wound, by attributing the vascillation to corrupt motives. Nor is it his purpose to examine with any unkindness, much less aspersity of criticism, the "Observations" of the Attorney-General. These, as well as the article which called them forth, are characterized by great ability, and, by the friends of the writers, and of the school to which they now severally belong, seem to be considered unanswerable. Substantially agreeing with Judge Douglas, no particular reference will be made to his paper. Nor will the other be especially noticed, except as may be necessary to explain the writer's own opinion, and the reasons on which it is founded: and

this will be done in a manner consistent with the respect for the Attorney-General, which all who know him even as slightly as the writer, entertain for his talents, and his private and public character. It is, however, no departure, he thinks, from this voluntary and agreeable restraint, to say, that in this controversy he has illustrated the philosophic truth, that the science of the law does less "to open and liberalize the mind," than "to quicken and invigorate the understanding," and has also exhibited rather the feelings of a partisan, and personal friend of the President, than the attributes of the accomplished lawyer. Nor is this latter weakness to be much wondered at or reproved. It leans, indeed, to virtue's side. Private attachment, founded in mutual gratitude, is, no doubt, its cause, and when just, as in this case it must be, is rather, even in excess, to be honored than condemned. Nor can these remarks receive any other consideration than may belong to their intrinsic value. They will be left to stand or fall by their own strength or weakness. Whatever adventitious importance, in the judgment of a few, might possibly be imparted to them, if the name of the writer was given, they will want. It is reason, and not the authority, slight as that would be in this instance, of an humble name, to which alone he desires to appeal. With these preliminary observations he proceeds to his task.

The question to be considered is, the power of Congress to legislate in regard to slave property within a Territory of the United States, to whose people they have granted a territorial government clothed with legislative power. Can they, in advance of such a grant, prohibit or establish slavery within the Territory, or, after such grant, can they do either, or protect, by legislation, such property if found there, against the will of the local government; and if not, can such government do all or either. These propositions can be best examined separately.

I.—The power of Congress to prohibit slavery, previous to its awarding a territorial government. This question should not be esteemed an open one, as it was judicially

settled against the power, by the Supreme Court of the United States, in the Dred Scott case. The question was there directly and fully presented. Such was the view taken by the minority of the Court, as well as by the majority. The former, as well as the latter, and properly, elaborately considered it. The case might have been made to turn on some of the other questions, but there were no others more clearly before the Court than this. Few cases ever arise in which there are not found propositions equally conclusive as to the judgment, but, generally, no Court performs its duty, if it fails to dispose of them all. This is necessary, to avoid subsequent controversy, not only in the particular instance where it might well occur, but in like cases that might thereafter arise. To be certain, so desirable in every system of jurisprudence, the law should be made known when the occasion is fairly offered, and the Court that fails in this particular, not only omits a clear duty, but does great injustice to the public, as well as to the individual suitors. The question then being before the Supreme Court, and decided, binds, constitutionally binds, every citizen, as long as that decision remains unreversed. That the opinion of the Court was as stated, is clear from the subjoined extract. After, as is almost universally admitted, an able treatment of the very question, and answering all the grounds upon which the power was placed at the bar, the Chief Justice concludes in these words: "Upon these considerations, it is the opinion of the Court, that the act of Congress, which prohibited a citizen from holding and owning property of this kind, (slave property,) in the territory of the United States, north of the line therein mentioned, is not warranted by the Constitution, and is therefore void; and that neither Dred Scott himself, nor any of his family, ever were free by being carried into this territory, even if they had been carried there by the owner with the intention of becoming permanent residents."

With this clear judicial opinion adverse to the power by a tribunal constituted by the great and patriotic men to whose wisdom and virtue we are indebted for the countless

blessings of the Constitution, and for the purpose mainly of deciding without appeal, constitutional questions—in order to confine the several departments within their prescribed orbits, and thereby to protect the rights of the United States, the States, and of the individual citizen, he is guilty, whether he thinks so or not, of libelling the memory of the great dead, to whom we owe everything connected with our national renown and unparalleled prosperity as a people, and of violating the Constitution, who refuses obedience to the decision. The Court may review it if the proposition is again properly presented, and if so will no doubt again re-affirm it, as they did in the case involving the constitutionality of the Bank of the United States, Osgood vs. the U. S. Bank, 9 Wheat—unless, which Heaven in its mercy forbid, vandalic efforts shall be successful in maddening the people to strike fatally at this great ark of our safety, by converting it from what it was designed to be and has ever been, a steadfast, independent and fearless, because independent, tribunal, into a partisan assembly, catching at every popular opinion and fashioning its judgments to suit the passing whim of the day. Should such an affliction be visited upon us, the doctrines of the Dred Scott case will not be the only doctrines of the Court which will be disregarded and dishonored. It is impossible to foretell how many constitutional landmarks will be destroyed, or to predict the calamities that would ensue. For a time we might live under them, but ultimately they would bring to an end our very institutions themselves. Supposing then that the question being thus decided, it is to be taken that the Congressional power does not exist, and that this is as clear as if the words quoted from the decision formed a part of the Constitution itself;—we are brought to the second proposition.

II.—Can Congress prohibit or establish slavery after granting a territorial government. This is also obviously closed by the same decision. The want of power at the antecedent period over the subject, is held to be absolute and not conditional. It is because slave property in the

territory was not made dependent upon congressional discretion; the constitution giving, as against Congress at all times, after as well as before a territorial government, the right to the citizen to take such property into any territory of the United States, and enjoy it unmolested by Congress.

The territorial condition remaining, the right continues to exist as far as Congress is concerned. But in thus holding, the Court are not to be considered as having decided that the privilege is given by virtue of any express constitutional provision. Slave property is not even mentioned by name in the fugitive or any other clause of the instrument. We know historically, why it was omitted. The owners of such property were not then as sensitive as they are now. The assaults upon the institution and its supporters, which have been for so many years hurled at both by a body of frenzied or knavish citizens of the States in which it ceased to exist, and that too chiefly by the slaves being sold to the South, have, as their natural consequence, yet more wedded them to the institution, and determined them not only at all hazards to maintain it, but to convince them that it is vindicated upon social, moral, religious and political grounds; and the result, at one time regretted by many southern men, has been to delay indefinitely, if not forever, its abolition in some of the States. In all human probability, but for these attacks, Delaware, Maryland, Virginia, Kentucky and probably Tennessee, would ere this have been without the institution. Climate, soil and staple productions, as well as the sentiment of the people, were leading to the change, when all was frustrated by these irritating, insulting attacks from without. This unfortunate hostility did not prevail at the era of the Constitution, and its effects were therefore unknown. Southern men then advised, and with almost one voice, against the insertion of the word itself in the instrument; and the only clauses that were designed to embrace it are the 1st art., sec. 2, par. 3, and the 4th art., sec. 2, par. 3. With the exception of these, no reference is made to slavery except in the 9th sec. 1st art., which was designed to arrest its increase by giving to Congress the

power to arrest the foreign slave trade, in which certainly no authority can be found to take such property and hold it in a territory of the United States. If this therefore can be done or prohibited, it is equally clear since the Dred Scott case, that the very right is not to be found in any clause of the Constitution. It can only be maintained upon the ground that it is not there prohibited, and not being prohibited, may be said to be allowed. This proposition is not now examined. It will be hereafter.

III.—If there is no power in Congress to prohibit slavery in a Territory, it would seem to be yet more clear that they possess none to establish it. The received opinion everywhere, from the date of the Constitution to the present day, has been that slavery is the creature of positive law. This law may be otherwise than by statute. Every nation has a common or unwritten law of its own, and this may maintain it. But in some mode or other, there must be special laws for its support, as it has been held that natural law disclaims it. Property in man may exist, but he is not by natural law property or the subject of property. Contract may be relied upon, and power resorted to, to create it, but these of themselves do not establish it, unless sanctioned by the law-making power. And it is now too late to question the existence of such a power. Such property has in some form or other in a qualified or absolute sense, existed in almost every nation in the world, and is clearly recognized by our revealed religion. It would be as mischievous to examine too nicely into its justice, as to examine into our title to the country we possess. Such an investigation as this last would perhaps before a tribunal governed by purely moral law, result in shaking it to its foundation, as having originated in unfair contract or unjustifiable force. In the affairs of men some things are to be esteemed as settled and unquestionable. Time, that great conservative element in human society, under the governments of the world, places certain rights of property beyond the intrusiveness of the political "Paul Pry" of the day. These are made to stand undisturbed because of the very antiquity of their origin.

They are, because they have been. Custom is their law, "usus efficacissimus rerum omnium magister." Legitimate power may deal with them and modify their character, and in some cases, for the good of the public, abolish them. But until this is done they remain as steadfast as if they had their beginning in the purest morality. This being the case, the power of Congress to establish slavery, must in direct terms or by necessary or fair implication, be found in the constitution. The only clause which gives any legislative power at all on the subject, except the fugitive clause, is the one referred to, the 9th sec. 1st art., and that is not a power to establish it, but to prohibit its increase. No reading, however latitudinary, can imply from the authority to prohibit, the authority to establish. And beside this, the question must be esteemed as settled by the decision in the Scott case. That judgment evidently treats the entire subject as beyond the sphere of congressional power;—that it is not submitted to the body at all, and is therefore to depend for its establishment or prohibition upon some other power.

IV.—If Congress cannot either prohibit or establish it, can they legislate to protect such property in such a territory? This question certainly can only be answered affirmatively, if slavery exists in such a territory "by virtue of the Constitution of the United States." If it does so exist, it is certainly within the power of Congress to legislate for its protection. But does it so exist? In a special message by President Buchanan to Congress, he states that "it has been solemnly adjudged by the highest judicial tribunal known to our laws, that slavery exists in Kansas by virtue of the Constitution of the United States." But the President evidently misapprehended the opinion to which he referred. There is no such doctrine to be found in it either in words or by any fair inference. All that the Court decided, and as to this point it was the only question before them, was that the Constitution did not prohibit the institution, and that it gave no power to Congress to prohibit it. The proposition before them was as to the Con-

gressional power. If they had supposed, as the President imputes to them, that slavery exists in a territory "by virtue of the Constitution of the United States," they would have been saved all further argument, as, if so existing, it would clearly be beyond the reach of Congressional power. The President's mistake is in converting the absence of an authority to prohibit it, which was all that the Court held into the existence of a right "by virtue of the Constitution," to hold unquestioned by territorial power, slave property in a territory. The error, when pointed out, is so obvious, that it must be at once corrected, to the conviction of the merest dullard. The Attorney-General is so dissatisfied with the doctrine, that he at first defended, with some feeling, the President from the charge of entertaining it. His defence, to be sure, is not such as gives the President credit for legal acuteness. It makes him merely to adopt and not originate it. It is to be regretted that an equal sensibility to the reputation of the Court, had not impelled "the Observer" to vindicate the Court also by showing that they had fallen into no such blunder. This would certainly have proved that although in form it was one of adoption: the President was in truth its real author. But yet justice to the highest tribunal of our country should be done, whoever may suffer by it. "The Constitution, (says the Attorney General,) certainly does not establish slavery in the territories or anywhere else," and "nobody in this country ever thought or said so;" and yet he complains that the Douglas article does injustice to Mr. Buchanan in stating that in his message to Congress he averred "that slavery exists in Kansas by virtue of the Constitution of the United States," when, what he did say "was only that the principle had been adjudged by the highest judicial tribunal known to our laws." The Constitution "certainly does no such thing, and nobody ever thought or said so," says Mr. Attorney, and yet his complaint is, that the President was made so to say, when what he did say was, that the Supreme Court had not only so thought, but so said, in a solemn judicial opinion. To

vindicate the President by displaying his ignorance, may be the only vindication the case admits of, but it does more credit to the candor of his friend than to the President's intelligence. But since the "Observations" were published, Mr. Attorney, in an Appendix to a new edition, changes his ground. In this the entire ground of censure of the course of Judge Douglas for not correctly quoting the President, is surrendered. It is here said that the President only stated, that slavery *exists* in Kansas "by virtue of the Constitution," which is not saying that it is by the authority of the Constitution *established* there. "We are in the wrong, (says Mr. Attorney,) if the expression that a thing *exists* by virtue of the Constitution, is equivalent to saying that the Constitution *establishes* it." Is not this most superlative hypocriticism? What is it that is said to exist? Slavery. Where and how? In the territory, and by virtue of the Constitution. What then takes it there and retains it there in opposition to congressional or territorial or other power? The Constitution of the United States. If so, is it not then there established by the authority which attends it? No, says Mr. Attorney, it is not established there by that sanction, but only so exists there. What is "to establish?" Lexicographers tell us, "it is to fix unalterably," and yet, although slavery is in Kansas by virtue of the Constitution, and is there by the same power fixed unalterably, it is not established, but only there so exists. This may be acute, but it defies ordinary comprehension. To such it must appear to be but the technicality of a special pleader pushed to the very verge, at least, of quibling. Certainly it was due to the Supreme Court to suggest that this distinction and its apparent absurdity are not to be attributed to them. In truth, the President's authority to the contrary notwithstanding, and though this is now in the Appendix impliedly endorsed by Mr. Attorney, the Supreme Court never intended to announce the doctrine in either form of expression. It is altogether an executive impression and blunder, not less original than erroneous. But what makes the attempted distinction the more idle is

what follows, the clause which the Attorney gives of the message, but which he does not give, but lets the reader to find as best he may. It is this: "Kansas is therefore at this moment as much a slave State as Georgia or South Carolina." That is to say, the existence of slavery in Kansas by virtue of the Constitution is fixed, and established there as it is fixed or established in either of those States. Is not slavery an established institution in Georgia or South Carolina? Does it exist there only in contradistinction to being established? The question is too ridiculous to be suggested, and it would not be done but for the respect due to the highest law officer of the government. Authority has sanctioned many an absurdity, but in this instance it is so gross as to be beyond its power. "Exists," as used by the President, is an equivalent term with "established," and no fair mind can read the whole paragraph without concluding that its author designed to express precisely the same idea. And it is equally clear from the manner in which the "Observations" treated the subject, that the distinction maintained in the appendix, was an after thought to which the Attorney was driven by the exigency of his controversy.

Slavery then not being so established, has Congress the power to protect it by legislation? The negative of this proposition would seem necessarily to follow from the principles upon which the case of Scott was decided, if not from the very terms of the decision. Why is it that there exists in Congress neither the power to establish nor prohibit the institution? It is because, in the judgment of the Court, the territorial clause, if applicable to after acquired territory, as they held it was not, did not give the power, and because the power to acquire territory and to hold and govern it, to be implied from the power to acquire, did not impart it. It was a subject not within the legitimate scope of either source of authority. The first did not embrace it at all, and the second could not by any just or fair implication be made to do so. Such being the view of the Court, it clearly follows that to legislate to protect the institution, is as much beyond the con-

gressional authority as to legislate to prohibit or establish it, and consequently all of them are amongst the powers "reserved to the States respectively, or to the people."

V.—The remaining and last question I propose to examine, is: Can the territorial government admit, protect or exclude slavery at any time during its existence?

1. It would seem to be an anomaly in our institutions if these powers do not exist. That slavery, an artificial instead of a natural condition, should be beyond the reach of human power, under any form of government, and should be admitted, protected or excluded in violation of the wishes of the people with whom it is or is to be, and in disregard of the wishes of all branches of the government, and of all general or local power, is a doctrine so extraordinary that it almost defies human judgment. No proof short of demonstration can be given to bring such judgment to a satisfactory conclusion in its support; and when we reflect on the length of time during which this state of things is to prevail, the doctrine becomes yet more startling. The territorial government may exist as long as the will of Congress shall have it exist. Admittance as a State into the Union, depends on congressional discretion. No population, however large, or other condition, gives legal title to such admission. The language is: "New States *may* be admitted by Congress into this Union." The territorial State may thus be practically made perpetual, and no power be found anywhere to put an end to African slavery. What renders this hypothesis still the more extraordinary is, that in 1787, when this great charter was adopted, such slavery even for its peculiar labor, had comparatively but a slight hold on the public mind, and little if any on the moral sentiment of the South or North; indeed it is not to exaggerate to say that the repugnance to it with Southern statesmen was then much greater than with the statesmen of the other States. In some of the latter the trade was proving a fruitful source of pecuniary profit, which they or the people were as unwilling to surrender, as the people of Liverpool were, at one period, as evidenced by their long continued

untiring efforts and unceasing zeal to defeat the abolition of the slave trade, by the English Parliament. It is impossible to believe that such men designed to place this then almost universally admitted blot beyond the possible reach of removal. Feeling as they then did, that it was a wrong, and in every way mischievous, it never could have been their purpose to perpetuate it. They could not but have supposed it would be within the reach of some power, and if not to be found in Congress, *as is now decided*, where else can it be but with the people in whose midst the wrong is found. It has however been thought, and this too by gentlemen of unquestionable ability, that the Supreme Court, in the case so often referred to, has decided that such power does not reside in a territorial government. This, it is submitted, is a misconception of the decision. The single question before the Court in this connection, was, whether Congress possesses the power to prohibit the introduction of slave property into a territory. In ruling it adversely, the Court does not say, or intimate that such property in a territory, has other safeguards, or that the owner is entitled to any further protection in its enjoyment, than exists in regard to other kinds of property. A sentence or two from the opinion of the Chief Justice will, it is believed, make this plain.

It had been contended that there was a peculiarity in slave property, that placed it on a different footing from other property. For this the laws and usages of other nations, and the reasoning of statesmen and jurists upon the relation of master and slave, had been referred to. These, says the Chief Justice, cannot "enlarge the powers of the government, or take from the citizens the rights they have received;" and as "the Constitution recognizes the right of property of the master in a slave, and makes NO DISTINCTION BETWEEN THIS DESCRIPTION OF PROPERTY, AND OTHER PROPERTY owned by a citizen, no tribunal, acting under the authority of the United States, whether it be legislative, executive, or judicial, HAS A RIGHT TO DRAW SUCH A DISTINCTION, or to deny to it the benefit of the provisions

and guarantees which have been provided for the protection of private property against the encroachments of the government;" and, after referring to the fugitive clause as expressly "affirming the right of property in a slave," the Chief Justice thus concludes: "And no word can be found in the Constitution WHICH GIVES CONGRESS GREATER POWER OVER SLAVE PROPERTY, OR WHICH ENTITLES PROPERTY OF THAT KIND TO LESS PROTECTION THAN PROPERTY OF ANY OTHER DESCRIPTION." All, therefore, that the Court has decided, is that slaves are property, as much so as any thing else that may be owned by man, and that such property is entitled to the same—not to less or greater—constitutional guarantees as any other description of property. This being obviously the doctrine of the Court, it necessarily follows, that whatever a constitutional government can do in regard to any other kind of property, it can do in regard to this. If any other kind may be excluded, this may be excluded; if any other kind may be more, or less, or not at all protected by legislation, the same is true as to this. If any other, after its legal introduction, can be, upon public grounds, excluded or abolished, it is also the case as to this. It is but sameness, identity of title and protection, which the Court maintains, not inferior or paramount—that all stand on the same footing, liable alike to the same restrictions and limitations, and entitled to the same guarantees. What is there in this species of property to exempt it from territorial legislative power? What is there, to make it the peculiar and single duty of such a power to legislate for its admission or protection? If it be but property, and, as such, only embraced by constitutional guarantees, it must share the condition of all other property, and therefore be subject to the legislative power. If this is not true, the territorial State would be almost without laws,—be one of nature. The peace and prosperity of the people depend upon laws defining and regulating property. Without such a power, property itself would be in a great degree out of the pale of protection. But if the power exists, it must depend upon those who possess it, how they will, in any particular

case, exert it, or whether they will exert it at all. These must rest with their intelligence and sense of duty,—Congress has no power but to recognize the territorial government, a power which is theirs for the same reason that proves the power, in the first instance, to create it. Nor can it be properly said, that the authority thus contended for exists upon the assumption that sovereignty "resides with such a people." If by sovereignty is here meant an absolute and paramount power over all other power, it certainly is not possessed. But if it is used in a restricted sense, as involving only the power to do the things supposed, when legislative power is granted to them, in relation to their own internal concerns, subject to the prohibition to be found in the Constitution, and which, in the language of the Court in another passage of the opinion, in some instances "it would be more advisable to commit" to them, as being the most "competent to determine what was best for their own interests," then certainly such sovereignty is theirs. And this, and this only, is the sovereignty contended for by Judge Douglas in his article in Harper. The Attorney-General might have saved himself the trouble of searching the speeches and writings of the Judge, with a view to disprove, upon his own authority, that sovereignty, in its more comprehensive meaning, did not reside with such people. The article itself, which was so critically and, no doubt, with intended fairness observed upon, would have answered his purpose. The right there asserted was stated as pertaining "to the people collectively, or as a law-abiding and peaceful community, and not to the isolated individuals who may reside upon the public domain in violation of the law, and such as can only be exercised when there are inhabitants sufficient to constitute a government, and capable of possessing its various functions and duties, a fact to be ascertained and determined by Congress;" and that then it was a right to be exercised, "subject to the Constitution of the United States." That a power, whose very existence depends on some other authority, and which is to be used in subordination to admitted paramount control, is not sov-

ereign, in the sense imputed by the Attorney-General, is too obvious to need proof. The whole doctrine of the article is inconsistent with such an assumption, and the error of construing it otherwise can only be ascribed to that general failing, which often is the weakness of a controversial writer. The power claimed is exclusively that which belongs to a legislative authority, granted without limitation as to any particular subject of legislation, and by an authority which has no congressional jurisdiction to impose a limitation, and which, therefore, knows no restriction, except such as is common to every other kindred subject. In this view, and in this only, is it a sovereign power, a power, in the language of the Supreme Court, "to determine what is best for their own interests," or in that of Judge Douglas, that which belongs to a title, "to all the rights, privileges and immunities of self-government, in respect to their local concerns and internal polity, subject only to the Constitution of the United States." He who contests these propositions, or their application to slave property, is bound to establish that such property has other guarantees, and is entitled to other rights than belong to other property. Such a task is beyond the reach of any conceivable reading of the Constitution, and is, consequently, a hopeless undertaking. At its date the repugnance of slavery to the public sentiment of the time, the general wish for its ultimate extinction, the provision to arrest, in a few years, its increase, and the absence of any other special power in relation to it, it may be considered as clear, that a proposition in the convention to secure it by other guarantees, than such as were provided for other property, and, more particularly, with such as would greatly delay, if not prevent its extinction, would, perhaps, not have received the support of any member of the body. Certain it is that no suggestion of the kind was made, and that this property stands but secured by the provisions which equally embrace and protect all other kinds. As has been seen, this doctrine is not only not inconsistent

with the opinion of the Supreme Court, but maintained by its principles.

It is now proposed to shew that it has the clearest congressional, and democratic, and executive sanction. As to the first, this might be done by an examination of the compromise of 1850. The terms of that legislation, and the grounds upon which it was supported and opposed, from its proposal to its consummation, would, it is submitted, without other proof, establish the fact of such a sanction. But it is sufficient for the purpose to refer to the ensuing legislation of 1854. The Kansas-Nebraska Act,—the principles of that Act, as it was passed, and those of the Senate amendments, proposed and advocated by Judge Douglas, and his opposition to the antagonistic propositions offered by the Senators from the States in which slavery does not prevail, all demonstrate that he, and those who agreed with him, then claimed for the people of a Territory the very right for which he now contends,—the right, without other restrictions than the Constitution contains, to legislate concerning slave property, as a concern belonging to them, during their territorial condition, in like manner as they could legislate concerning other property. And, whatever doubts might then have prevailed, as to the establishment of this right by the principles of the former compromise, it is not for those who concurred with the Judge, and voted for the passage of the last Act, now to deny that such Act, as far as such property was involved, but carried out the doctrine of the former, now to deny that the doctrines so carried out involve the power, which the words used in it clearly include. Nor is it for those who opposed the latter Act, on the very ground that such would be its effect, and proposed amendments to avoid it, now to maintain that such is not its operation. What then is the meaning as to this question of the Kansas and Nebraska Act? Does it maintain Judge Douglas's doctrine? Unless language has lost its use, and serves only to mislead and delude, no other meaning can be given to it. Before quoting it, let us see the state of things existing, when the Act was under consider-

ation. The admission of slave labor into the Territories, and the right of Congress to prevent it by particular prohibition, were agitating the nation. The hopes of those who with patriotic motives devised the compromise of '50, were not fulfilled.

The Territories now to be organized, of Kansas and Nebraska, again presented the disturbing question. The consultations in both branches of Congress were warm and exciting. The advocates of restriction and its opponents alike, displayed great ability. From day to day, in the Senate particularly, propositions were offered, presenting in various forms the views of each. The friends of State equality, from the States where slavery did not exist, as well as Southern Senators, and who were equally desirous of freeing Southern States from this badge of degrading inferiority, implying disgrace, because imputing injustice and wrong, zealously labored to effect their object; and this, in the opinion of almost every Southern member, would be effected by the last amendments suggested by the Committee on Territories, of which Judge Douglas was chairman, in their report of the 4th of January, 1854. After stating what they supposed were "the principles established by the measures of 1850," and how these had served to allay agitation, and restore peace and harmony "to an irritated and distracted people," they said: "In the judgment of your committee, those measures were intended to have a far more comprehensive and enduring effect than the mere adjustment of the difficulties arising out of the recent acquisition of Mexican territory. THEY WERE DESIGNED TO ESTABLISH CERTAIN GREAT PRINCIPLES, WHICH WOULD NOT ONLY FURNISH ADEQUATE REMEDIES FOR EXISTING EVILS, BUT, IN ALL TIME TO COME, AVOID THE PERILS OF A SIMILAR AGITATION, BY WITHDRAWING THE QUESTION OF SLAVERY FROM THE HALLS OF CONGRESS AND THE POLITICAL ARENA, AND COMMITTING IT TO THE ARBITRAMENT OF THOSE WHO WERE IMMEDIATELY INTERESTED IN, AND ALONE RESPONSIBLE FOR, ITS CONSEQUENCES. WITH A VIEW OF CONFORMING THEIR ACTION

TO THE SETTLED POLICY OF THE GOVERNMENT, SANCTIONED BY THE APPROVING VOICE OF THE AMERICAN PEOPLE, YOUR COMMITTEE HAVE DEEMED IT THEIR DUTY TO INCORPORATE AND PERPETUATE IN THEIR TERRITORIAL BILL, THE PRINCIPLE AND SPIRIT OF THOSE MEASURES;" and the amendment which was recommended and adopted to accomplish this object, with a proviso offered by Mr. Badger, was in these words:—"That the Constitution and all laws of the United States, which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere within the United States, except the eighth section of the act preparatory to the admission of Missouri into the Union, approved March 6th, 1820, WHICH BEING INCONSISTENT WITH THE PRINCIPLE OF NON-INTERVENTION BY CONGRESS, *with slavery in the States and Territories*, as recognized by the legislation of 1850, commonly called 'the Compromise Measures,' is hereby declared inoperative and void, IT BEING THE TRUE INTENT AND MEANING OF THIS ACT, NOT TO LEGISLATE SLAVERY INTO ANY TERRITORY OR STATE, NOR TO EXCLUDE IT THEREFROM, BUT TO LEAVE THE PEOPLE THEREOF PERFECTLY FREE TO FORM AND REGULATE THEIR DOMESTIC INSTITUTIONS THEIR OWN WAY, SUBJECT ONLY TO THE CONSTITUTION OF THE UNITED STATES, provided that nothing herein contained shall be construed to revive or put in force any law or regulation which may have existed prior to the Act of the 6th of March, 1820, either protecting, establishing, or abolishing slavery." The prohibitory section of the Missouri Act of the 6th of March, 1820, was for the reason alleged, repealed, and the principles and motive of the repeal stated to be, to effect the true intent and meaning of Congress, and which was declared to be twofold; first, "not themselves to legislate slavery into any Territory or State, nor to exclude it therefrom;" second, to leave the people thereof perfectly free to regulate their own domestic institutions, in their own way, subject only to the Constitution of the United States. The bill as thus amended was passed by the Senate by a vote of thirty-seven to fourteen, the majority including every South-

ern Senator present, except Mr. Bell, of Tennessee, and Mr. Houston, of Texas, and twelve Senators from the other States; and on the 22d of May, after a long and able discussion, it was passed by the House, by a vote of one hundred and thirteen to one hundred, there being in the majority every Southern member but seven, and most, if not all of these were opposed to it, not because of the principles contained in the particular amendment quoted, but on other grounds. Unless words be used, as dicers oaths, to deceive, and Congress intended by false pretences to delude, is it not clear that this amendment declared, and sanctions the doctrine of popular sovereignty as maintained by Judge Douglas? That doctrine is, that a territorial government has a right to legislate in relation to their local concerns and internal polity, subject only to the Constitution of the United States. The amendment declares its very purpose to be, "to leave the people thereof (a territory) perfectly free to form and regulate *their* domestic institutions in their own way, subject only to the Constitution of the United States;" and this purpose was especially avowed in regard to *slave property.* Such property indeed gave rise to the very agitation which it was the object of Congress to terminate. That alone constituted the danger in which the country was supposed to be, and consequently the principle was the more particularly prepared to meet that danger. It was decided to leave the people perfectly free to regulate it as a domestic institution of their own, in their own way. It declares, first, what is not the intent and meaning of the act: "It is not to legislate slavery into any State or Territory, nor to exclude it;" secondly, what was its intent: To leave it as a domestic institution to the people, to be settled in their own way, with no other restriction than the Constitution of the United States may impose.

One or the other of these two conclusions is inevitable. That if Congress believed they had the power themselves to legislate upon the subject, they thought it wiser to surrender it to the people of the Territory, or that they believed that they had not the power, and declared it to be in the

people, so as to settle all doubts as to the right of the latter to exercise it. The power which, upon either hypothesis, they refused to exert, was to legislate slavery into any Territory or State, or to exclude it therefrom; and that which they declared to be in the people, was the power "to legislate slavery into or exclude it from such Territory or State." It will be seen, too, that in this regard, the people of a Territory are placed in the same condition with the people of a State, and that the power in question is not more disclaimed as to the latter, than as to the former, and that the power left to each, is left in the same terms and to the same extent. Whatever, therefore, under this act, the people of a State can do, the people of a Territory can do,—the sole limitation upon the authority of either is declared to be in the Constitution of the United States. What is the extent of such limitation? Taking private property for public use without compensation, or the implied one of prohibiting the ingress into the Territory of private property? Is either more applicable to an organized Territorial government than to a State? Is private property appropriated to public use by laws abolishing slavery, or prohibiting the right to bring such property into either? Certainly not,—such legislation is to be found, to a greater or less extent, in almost every State in the Union, and no one has had the temerity to call it in doubt. This was, of course, known to Congress in '54, and they could not, therefore, have imagined that the validity of such legislation could be questioned on any such constitutional ground. They thought that slavery was a domestic institution, merely depending, for its existence or exclusion, upon the legislative will of those with whom it was, or was to be domiciled. They, therefore, not only did not except it from the will of the people, who were to be left "perfectly free to form and regulate" their domestic concerns "in their own way," but, in language so unambiguous as to admit of but one interpretation, it was evidently that very institution which induced them to declare this principle of popular sovereignty. This view, if possible, becomes the more apparent, when we

consider the object and effect of the Badger proviso. The Territory to be organized was slave territory when admitted into the United States. Such property was then known to the laws of France and Spain, and had been for years, and was held within the territory at the time of cession. If Congress had the power to pass the 8th section of the act of the 6th of March, 1820, (the Missouri Compromise,) such laws were by that section repealed, and the entire territory north of the prescribed line, thereby permanently devoted to free labor, whatever might be the wishes of its people. This, of course, would not have left them "perfectly free to form and regulate that" domestic institution "in their own way," and it was therefore necessary, in order to consummate the policy of the act, to annul the restriction, and this was expressly done by the amendment of the Committee. But Mr. Badger, an acute and able lawyer, as well as an enlarged and conservative statesman, saw, or thought he saw, that some further provision was necessary to attain the object. He, evidently, supposed that it might thereafter, upon a principle known to the books, be contended that the repeal of the restrictive section, without more, would but revive the laws of the country, whatever these were at the date of the enactment of that section, and thus revive the agitation which the majority were so anxious to extinguish forever. To guard against this, he proposed his proviso, declaring "that nothing herein contained should be construed to revive or put in force any laws or regulations, which may have existed prior to the act of the 6th of March, 1820, *either protecting, establishing, or abolishing slavery*," and it was adopted by a vote of thirty-five to six. Every Senator from the free States, except Gov. Dodge, of Wisconsin, voting in the affirmative, and but five Senators from the slave States in the negative, and these were Messrs. ADAMS and BROWN, of MISSISSIPPI, JOHNSON and SEBASTIAN, of ARKANSAS, and RUSK, of TEXAS. The purpose of this amendment, its sole purpose, was to submit the very question of domestic slavery to the people of the Territory, untrammeled, as a domestic institution of their own, which

Congress was either without the power to control, or was resolved not to control. It was to be theirs, to be disposed of "in their own way," as the same is disposed of by the people of a State; that is to say, it was for them "to legislate it into, or exclude it" from, their Territory. All antecedent laws existing before that of 1820, inconsistent with such a right and power, were, by the proviso, repealed, as, by the original amendment, was repealed the interfering section of that Act. It was esteemed to be not only their true policy, but to be as just as it was true, to leave the question to the Territorial people, and to leave open for emigration the Territory to every citizen of the United States, without being subject, in regard to slavery, or any other domestic institution, to congressional mastery, but only to that authority which, in the language of President Buchanan, in his letter of acceptance, hereafter more particularly quoted, is "derived from the original and pure fountains of legitimate political power, the will of the majority." It is manifest, that neither the mover of the amendment, nor any member of either House, then supposed that the Constitution would either establish, or cause to exist, or protect, or prohibit slavery in the Territory, if the local laws prohibiting or authorizing it, which prevailed at the date of the cession to the United States, were revived. If such an opinion was then entertained, the amendment, in its body as well as the proviso, would have been merely idle and nugatory legislation. Since, if that was the case, the law neither could give nor take away the constitutional right to move and hold slaves in the Territory. It was, on the contrary, the design to submit that right to the judgment alone of the Territorial government, and, with that object, to remove all possible objection to its exercise, by annulling the entire local law regarding it, whatever that might be, whether to be found in the Act of 1820, or in the antecedent laws of France and Spain.

But if there can be no legislation by the territory, what law is to regulate the rights and to furnish the remedies? Are these to be as various as are the laws of the several

States from which the property was taken? Are the rights to hold and dispose of such or any other property, to depend on such laws? Then, an emigrant from one State might sell each slave single, whilst one from another could not sell at all, or sell if the sale separated man and wife, parent and child. In one case slaves would be liable to execution for debt in the life time of the owner, or to sale at his death, for payment of his debts or distribution, and in the other not. In one they would be subject to a judgment lien, in the other not. In one the children of a slave mother might belong to her owner, in the other not. In one they might be free, in the other not. In one trover might be the remedy, in the other not. In one resistance by the slave to the owner might be punished with death, in the other not. In the one the mode of feeding, clothing and working might be prescribed, in the other not. In the one color might be presumptive evidence of slavery, in the other not. In the one slaves might be considered as real estate, and so to be disposed of, during life or at death, in the other not. And what is true as to this species of property, is true of all. Its title may originate in the State whence it came, but its regulation, its continuance and its protection must depend upon the laws of the place where it is. When there exist in such a place a legitimate legislative power, unrestricted except by the Constitution of the United States or a State Constitution, it is subject to such power. Being property as long as the Territorial existence remains, it cannot be confiscated or appropriated to public use without compensation. Nor is there in Judge Douglas's paper a word, fairly considered, tending towards a different doctrine. The introduction, in the future, of slavery into the Territory, may be prohibited. But this is not public appropriation of private property. It is not denied that this can be done by State power, although beside the prohibition in the Constitution of the general government, there is a like one, it is believed, in the Constitution of every State. Why then, as must be admitted, is it in that case legitimate? Because it is a fit subject of legislative power,

and is not within the words or object of such a prohibition. The same thing is equally true of every other species of property. Gambling may be authorized, and its implements, its cards and its dice, be property in a State. Can these be taken to an organized territory and there held and used in defiance of its legislative power? Polygamy may be legal in a State, there being nothing in the Constitution of the United States against it, and the issue of each marriage, legitimate; can the husband take his two or more wives into such a Territory, and there live with them all, and his children there be legitimate heirs to his estate in equal defiance of its legislative power, and the public sentiment of its people? Lotteries are lawful now in some States, and may be made so in all, should the promptings of a just and moral policy, now so general, cease to prevail. Can the dealer take into such a Territory the emblems of his trade, property, where he emigrates from, and vend them in defiance of Territorial power, and the almost unanimous wish of its people? In some States a dog may be property, in some not. Has the emigrant from New York, where it has recently been judicially decided that a dog is property, the envied constitutional privilege to take with him his dumb companion and friend and servant, and to enjoy his society and the fruits of his labor, not only unquestioned by Territorial power, legislative, executive or judicial, but with the duty of each and all to protect him? and has the emigrant from South Carolina, where such property may not be recognized, no such right? If there be such a disparaging and unjust distinction, it is almost a just cause for rebellion. But if the doctrine be sound, how is it practically to operate? The laws of the several States are often, and may even be on the same subject, conflicting. This conflict must give rise in the Territory to constant controversy incapable of judicial adjustment, if but the one law is observed. What is to be done? Can any peaceful results be attained? Certainly not, if both laws are to be equally regarded, and what then is inevitable—confusion and violence; and then

too what a singular appearance would an edition of their statutes and common law present; what a heterogeneous mass its contents. Its title would be, the statutes and other law of the Territory; open it and you find statutes of Massachusetts and of Georgia, of Pennsylvania and of Mississippi, and of the common law of each, with a head note that these apply respectively only to the citizens who have emigrated from such State. That he is still, and must remain not only against the will of the Territorial government, but his own, as to all his rights and obligations, a citizen of Massachusetts or Georgia, Pennsylvania or Mississippi, until the period shall arrive when all will be merged into one people, to be governed by the laws of their own adoption, through the necromancy of a State Constitution, the only remedy for the inconsistencies, the absurdities, and the paralyzing effects of the doctrine that Territorial legislative power has, if any, a most limited sphere for its operation. In fact the more the principle is examined, the more untenable, if not absurd, it appears.

Will any man with any regard to his reputation, whether he has mastered the primer of political science, or not, answer these enquiries in the affirmative? If such a one is to be found, he can point to no other dialectics as the source of his error and his apology, than those of the Attorney-General. In a word, the whole question resolves itself into this:—What is legislative power? What are its legitimate objects? If property, its existence, its regulations and its uses, and its protection by law, subject only to such constitutional limitations as may exist, is not, then is it divested not only of one but of its chief elements, its very life blood. It can then deal only with man, his physical efforts, his mere animal capacities, and hardly at all with his moral nature and its obligations, and not at all where these involve property and its application.

The Attorney-General, in his Appendix, tells us that "no one who has mastered the primer of political science," will deny that a government unrestrained and unchecked by any constitutional prohibition, has "the power to con-

fiscate private property, even without compensation to the owner." That this power can only be obviated by limitation, and that this is accordingly done in the Constitution of the United States, and in every State Constitution. Is this so? If it be, the present writer has not mastered the primer. Are there no great principles of justice which lay at the foundation of every form of society, and fashion and control it without express incorporation, into its organic law? And if there be, is it not one of them that private property cannot be taken for public use, without compensation? Such principles may be violated. Property may be confiscated, and persons too imprisoned and executed without cause, in the mere gratification of a tyrannical will. *Ex post facto laws* may be enacted and enforced, and acts declared a crime, which in the eye of man and of God were not only not criminal, but laudable when they occurred. But are these justified? There may be no physical power to resist them, but are they on that account, in human or divine judgment, legal? Are they not restrained by a voice which in the eye of civilization is mightier than armies, the voice of justice issuing from the "bosom of God," to preserve "the harmony of the world." Could then such acts be perpetrated without redress, had there been no such prohibition in the Constitutions of the several States, and of the general government. Chief Justice Marshall, who, Mr. Attorney perhaps will admit, had at least mastered the "primer of political science," in the case of Fletcher and Prate, 6 Cra., speaking too for the whole court, his co-students of the same primer, says:—"It may well be doubted whether the nature of government and society does not prescribe some limits to a legislative power, and if any be prescribed, where are they to be found, if the property of an individual fairly and honestly acquired, may be seized without compensation."

The historical reference too, of Mr. Attorney, it is submitted, he clearly misapprehends. "Great charters, bills of rights and constitutions to limit the sovereignty" of the governments under which our Saxon ancestors lived and

suffered, were obtained because the title to them was to be found "in the nature of society and civil government." In the judgment of all after times, and of the great and good men of the day, it was on this ground, that the labors, plans and battles of our English ancestry, "during seven hundred years," commended them to just approval and admiration. It is because sovereignty is not "in its nature irresponsible and absolute," that the money and blood spent to restrain it, were vindicated in the eyes of a civilized and enlightened world. To consider the example otherwise, and as teaching the lesson which Mr. Attorney reads us, is to bring to its application rather the logic and philosophy which belong to a plodder in special pleas, than the enlarged and liberal views which attend the researches of the historical student and statesman. The great charter and bill of rights were claimed and acquired because the principles of political and civil freedom contained in them, were our ancestors' before and independent of such recognition. These date not from charters and bills of rights, but from "the nature of society and of government." In this latter they are inherent as the birth-right of the social man.

But if in this age of the world, such a doctrine could exist anywhere, can it prevail with us? Our institutions are redolent of freedom. For freedom, our ancestors, during seven years of trial, fought, bled and died. It was her teachings that inspired and supported them during their fearful struggle. By them, no sovereignty was recognized in any form of government that might be adopted, which could legitimately act on property or persons without the restraint of these just principles of justice and society, in which alone society can be enjoyed or tolerated. These they well knew must be the implied conditions of all social power, and as effectual to limit and restrict it as if in words repeated again and again, in its particular constitution. If this be not so, they also were not "masters of the primer of political science." In such company it is pleasant to err, even though the error shocks

the learning and profound researches of a high law officer, who, his friends imagine, has traversed the whole of the circle of the science, and sounded its depths as well as its shadows.

It has also democratic sanction, and in a form and under circumstances that no member of the party loyal to his faith, and no member of the present administration, can consistently repudiate. That party, by its National Convention, held in Cincinnati, in 1856, by the unanimous vote of the members from every one of the States, declared:

"The American Democracy recognize and adopt the *principles* contained in the organic laws establishing the Territories of Kansas and Nebraska, as embodying the *only sound and safe solution* of the 'slavery question,' upon which the great national idea of the people of this whole country can repose in its determined conservatism of the Union—*non-intervention by Congress with slavery in State and Territory, or in the District of Columbia.*

"That this was *the basis of the Compromises of* 1850, confirmed by both the Democratic and Whig parties in National Conventions—ratified by the people in the election of 1852—and rightly applied to the organization of the Territories in 1854; *That by the uniform application of this Democratic principle to the organization of Territories, and to the admission of new States, with or without domestic slavery, as they may elect,* the equal rights of all will be preserved intact—the original compacts of the Constitution maintained inviolate—and the perpetuity and expansion of this Union insured to its utmost capacity of embracing in peace and harmony any future American State that may be constituted or annexed with a republican form of government."

Can it be said, that they merely meant that slavery might be introduced or excluded by the people of a Territory, when assembled to form a State government, when no one ever doubted that power, and that, to such time, it was to exist there by virtue of the Constitution of the United States, not only entirely exempt from their control, but with an obligation, on their part, to protect it by legislation? Was that the democratic "principle in the organization of Territories," which they designed to approve? Was that the only sound and safe solution of the slavery question, upon which the great national idea of the whole country can repose, in its determined conservation of the Union, "non-intervention by CONGRESS with slavery in State and Territory, or in the District of Columbia?" Did the dele-

gates from the free States suppose that, that only was the meaning of their declaration,—that slavery is to exist in each Territory, notwithstanding the political or conscientious repugnance of the people? Was that the feast to which they had been invited, and to which they invited their constituents? Was that, in the honest judgment of the Convention, the panacea whose wisdom and result were attested not less by its "salutary and beneficial effects in allaying sectional agitation, and restoring peace and harmony to an irritated and distracted people, than by the cordial and almost unanimous approbation with which it has been received and sanctioned by the whole country," "that slavery exists in Kansas by virtue of the Constitution of the United States, and that Kansas is, at this moment, as much a slave State as Georgia or South Carolina?" Imagine a delegate crazed enough to have proposed, as an amendment to the approved doctrine, "non-intervention by Congress with slavery in State or Territory, or in the District of Columbia," this proviso as a reason for non-intervention, "that Kansas and Nebraska, by virtue of the Constitution of the United States, are now" as much slave States as Georgia or South Carolina. How, think you, would it have been treated, and how many votes, South or North, would it have commanded? Would not every corner of the Hall have resounded with a unanimous and indignant negative? And yet, by a monstrous perversion, portions of the party, and the Attorney-General, now endeavor to attribute to the Convention that very meaning. Had this been then avowed, how many votes in the free States would have been cast for the nominee of the Convention? Is any man wild enough to believe that he would have received the vote even of the State of his nativity, his ever-constant admirer and supporter? As it was, the declaration of congressional non-intervention which he endorsed, though complied with the clear avowal of it, in the sense contended for by Judge Douglas, of "popular sovereignty," nearly cost him her support, and yet more endangered his success in the other free States, where there prevailed for him no particular regard

or admiration. His hopes, and those of the democracy, as it was, were nearly shipwrecked; how utter and enduring would have been the disaster, had the Convention, or had he, in his letter of acceptance, declared that, by the principles of his party, as thus authoritatively announced, "slavery existed in Kansas, and that it was as much a slave State as Georgia or South Carolina!" As it was, comparatively a mere youth, with no reputation as a statesman, with no public service to have enabled him to become one, with no hold, in any State, upon the popular heart, and with no particular claims upon public confidence, was near winning the prize of the contest. What contest would it have been, if the doctrine now attributed to the Convention, and, under gross misapprehension, afterwards proclaimed by the President, upon the authority of the Supreme Court of the United States, and as right in itself, and now endorsed by his Attorney-General, had been then declared? It would hardly have merited the name of a contest. The majority for Col. Fremont, it is no exaggeration to say, would have been larger than was ever given in any former serious struggle. If this be so, and what fair man will deny it, how unjust to those who supported Mr. Buchanan, how abusive of the confidence which they reposed in the fair dealing and frankness of himself and of the Convention in regard to this very slavery question, now that the victory is won, to be told by him and his law officer that they had been deluded, that the language of the Convention, and his own, did not mean what every unsuspecting and intelligent man throughout the canvass was known to have attributed to it, but that it had another, and a totally different, though carefully concealed, meaning, which, had it been apparent or disclosed, would have been almost universally disapproved of by them. What sorry return for consistent, zealous and persevering efforts to elevate the incumbent to the highest and most dignified office known to man!

Third: The executive sanction to the doctrine of Judge Douglas, proposed to be shewn, (and which has been in part anticipated,) is as obvious as the Congressional and

convention or party sanction. 1. The approval of the act of 1854, by President Pierce, evidences his sanction, nor as far as the writer knows, does that distinguished statesman now, nor has he at any time stated that his interpretation was not its popular and received one, and certainly, as has been shown, that was the sense in which it was considered by the subsequent national convention. But beside his approval of the act, his opinion of its principle is more distinctly given in his special message to Congress, of the 24th January, 1856, relating to Kansas. He there says: "The Act to organize the Territories of Nebraska and Kansas, was a manifestation of *the legislative opinion of Congress on two general points of constitutional construction.*" The first has no bearing on the present discussion, but the second was said to be, "*that the inhabitants of any such Territory, considered as an inchoate State,* are entitled, in the exercise of self-government, *to decide for themselves* WHAT SHALL BE THEIR OWN DOMESTIC INSTITUTIONS, *subject only to the Constitution, and the laws enacted by Congress under it,* and the power of the existing States to decide, according to the provisions and principles of the Constitution, at what time the Territory shall be received, as a State, into the Union." Can the most refined ingenuity construe this as meaning any thing else than the very doctrine of Judge Douglas, which the Attorney-General is now, with more zeal and ingenuity than true regard for the reputation of President Pierce, assailing? One of the only two limitations to which alone, the President says, the power of a Territorial people is subject, demonstrates that it is to be exercised during the Territorial condition, and during that condition alone. Congress is to decide at what time the Territory is to be a State of the Union, and for all the time previous to such decision, says Mr. Pierce, if his words have any meaning, the Territorial people are considered as an INCHOATE STATE, and entitled, in the exertion of self-government, to determine for themselves what shall be their own domestic institutions. The particular institution, indeed the only one, that led to the legislation, it is to be

remembered, was domestic slavery, and upon this, says the President, Congress had given the people the power to "determine for themselves as a right," in the exercise of self-government, "belonging to them as an inchoate State," and, because of such State's existence, consequently, from its origin to its extinction. The principle which he is said to have then intended, is, that the power is possessed only when such a people meet in Convention to establish a Constitution, in order to be admitted as a State into the Union. If this be so, it is clear that the President was opposing a mere figment of his own brain. Who, either wise man or fool, ever imagined that such a power as that did not exist? A State Constitution necessarily implies State sovereign power, and such power, and for the very reason that it is State power, includes the power to deal as it sees fit with slavery or any other domestic institution. Such was not the question which was then troubling the public mind. It was the one which, in this particular, the Territorial condition presented, and upon that question, if the President designed what he said in his message of January, 1856, if he designed sincerely then to express his real opinion, it was that the "constitutional construction" evidenced by "the legislative opinion of Congress" in the Kansas and Nebraska Act; was, that upon this question of domestic slavery, the right and power of a Territorial people were the same with the right and power of the people of a State. 2. Of Mr. Buchanan's sanction, his letter of acceptance of the 16th of June, 1856, furnishes conclusive evidence. After alluding to the agitation by which the question "of domestic slavery" had too long distracted and divided "the people," and stating that it seemed to be "directed chiefly to the Territories," and anticipating that it was "rapidly approaching a finality," he says: "The recent legislation of Congress respecting domestic slavery, derived as it has been from the original and pure fountain of legitimate political power, the will of the majority, promises ere long to allay the dangerous excitement. The legislation is founded upon

principles as ancient as free government itself, and in accordance with them has simply declared THAT THE PEOPLE OF A TERRITORY LIKE THOSE OF A STATE, SHALL DECIDE FOR THEMSELVES WHETHER SLAVERY SHALL OR SHALL NOT EXIST WITHIN THEIR LIMITS." Is it within human power, even plausibly, to pervert these words from their clear and obvious meaning? Slavery agitation was, says the President, "directed chiefly to the Territories." It was there a cause of continual quarrel. In the States, as far as regarded the States themselves, the question was at rest. They were almost universally considered as free to "decide for themselves," whether it should exist with them or not. To deny that power, or to control or regulate its exercise, it was conceded was impossible—State authority was in this connexion, absolute and exclusive. But the difficulty was as to the Territories. There the struggle was going on, and its agitation there, though in one sense local, was distracting and dividing "the people of this Union, and alienating their affections from each other." The recent legislation, (the Acts of 1854,) founded on the original and pure fountains of political justice, "the will of the majority," promises, (says the President,) ere long to allay the dangerous excitement. By that legislation, vindicated "by principles as ancient as free government itself," it was declared to be by the President, not only the doctrine of the country, but the law of the land, which all men were bound to obey, whether peasant or President, "that the people of a Territory, *like those of a State*, SHALL DECIDE FOR THEMSELVES WHETHER SLAVERY SHALL OR SHALL NOT EXIST WITHIN THEIR LIMITS." Mark the words and doubt, if you can, Mr. Buchanan's *then* meaning.

The people of a Territory have, on this disturbing question, LIKE POWER WITH THOSE OF A STATE. As the latter can decide it for themselves, untrammeled and unquestioned, so can the former. The principle on which the power rests with each is identical, and founded equally upon "the original and pure fountains of political power, THE WILL OF THE MAJORITY." The former, the people of a Territory,

therefore, LIKE THOSE OF A STATE, are to decide for themselves, whether slavery shall or shall not exist within their limits. What limits? Territorial limits. During what period? Territorial existence. As a State, can decide it within State limits, and during State existence; so, *said the President*, if he designed to be sincere, (and who dare question this,) can the people of a Territory, within their limits, and during their existence.

In conclusion, then, the writer submits, that the doctrine of popular sovereignty, maintained from first to last by Judge Douglas, and now so assailed by the Attorney-General, has had the clearest and most explicit sanction of Congress, the Convention, and President Pierce, and, above all, of President Buchanan; and it is with equal conviction of its truth that he asserts, that without the belief in the sincerity of such sanction, and especially the last, President Buchanan would now be enjoying the quiet and leisure of Wheatland, gratified only by remembering the services rendered his country, at home and abroad, in other public, but, perhaps, in his estimation, subordinate and less desirable stations than the one in which he now, as his friends assert, figures so conspicuously, and honorably, before the world, as well as the nation.

If the writer has been successful, he has made good these propositions:

I.—That Congress has no power to establish, or prohibit slavery in a Territory of the United States, before giving to it a Territorial government, or to protect it after that period.

II.—That the right of a citizen to emigrate into such Territory with slave property, is not by virtue of any express Constitutional provision, but because such Territory is the common property of all the States, and there is nothing in the Constitution denying the right.

III.—That the right only exists because slaves are property, and their owner entitled to the same privileges, guarantees and protection, that appertain to the owner of any other species of property.

IV.—That this being the reason and limit of the right, it is subject to all legitimate local power, to which other property is subject.

V.—That being property, and in this regard nothing else, it is within the local legislative power, wherever such power legitimately exists.

VI.—That a Territorial government, clothed with legislative authority, unrestrained except by the Constitution of the United States, can legislate respecting such property, in like manner, and to the same extent that it can legislate respecting any other property.

VII.—That Congress having no power itself, directly to establish, regulate or prohibit the introduction of such property, they cannot, in granting a Territorial government, and vesting it with legislative authority, direct that authority to do either as that would be—to do themselves INDIRECTLY what they are prohibited from doing AT ALL.

VIII.—That slaves being in this view but property, they are the fit subjects of legislative power wherever that is constitutionally lodged, and therefore the proper subjects of Territorial legislative power.

IX.—That the very policy and principle of giving such power to a Territorial government in regard to slavery, as a domestic institution of their own, to be admitted, regulated or prohibited as they might deem advisable, and thereby to remove it permanently from Congressional interference and controversy, and consequent general agitation, was the sole purpose of the section of the act of 1854, which amongst other things, repeals the Missouri restriction, and which on account of that purpose exclusively, it is believed, received the almost unanimous vote of the Senators and Representatives of the Southern States, and the votes of the democratic Senators and Representatives of the free States, who gave it their support.

X.—That this principle was in words affirmed by the Cincinnati Convention not merely as one of expediency, but of constitutional obligation.

XI.—That besides receiving, when the Act was passed, and afterwards the sanction of President Pierce, it was, in the strongest terms which our language supplies, endorsed by President Buchanan, in his letter of acceptance of his nomination, of the 16th of June, 1856; and, FINALLY, that, upon this principle, in regard, especially, to slavery in the Territories DURING THE TERRITORIAL STATE, the presidential canvass was conducted in every State of the Union, and resulted in the election of Mr. Buchanan, at least as far as his votes in the free States were concerned, because, and only because, of the conviction of the voters in those States that Congress, the Cincinnati Convention, and himself, were sincere in its adoption, and that the same would be carried out in perfect good faith, and forever terminate, as they all alike proclaimed to the people would be its result, the almost fatal convulsion in which it had already involved the country. If these several conclusions have been maintained, as the writer conscientiously believes, he submits, that it is not only now too late to deny the doctrine they support, or to avoid it, with any hope of deluding an intelligent people; but that such an effort is, and will be considered equally repugnant to the clearest obligations of private and public morality. And, with such a stain upon its good name, and upon the frankness and honor of its leading statesmen, neither the party nor they will deserve to be hereafter confided in; and the good sense and virtue of the people will, on the very first occasion, proclaim their sentence of condemnation upon both. But the writer does not share in the apprehensions of those who anticipate such folly, as well as abandonment of duty. He does not believe that a great party, claiming for itself, and, in regard to this question, justly claiming, the virtue of nationality, will be so regardless of its recent policy and pledged faith as now to violate both. A few, from mental weakness, or ultra opinions, or personal hostility, or private rivalry, may advise such a course, but it is confidently believed that it will, and by a judgment approximating unanimity, be instantly and

absolutely disapproved and rejected. But, should it be otherwise, and such counsels prevail, the party will be certain to emerge from the contest, and deserve the fate, "lean, rent and haggard," and, what will be infinitely a more dire result, our government will also be rent from apex to corner stone.

With a few reflections suggested by the subject and the present condition of the country, and these remarks, already extended beyond the writer's original design, will be brought to a conclusion.

The democratic success in 1856 was owing more than to any other cause, to the manner in which the slavery question was disposed of by Congress, and the party, by establishing the now censured doctrine of popular sovereignty. Then it was approved by Congress, by the convention, and its nominee. It was esteemed by President Buchanan as a constitutional principle as ancient as free government itself, and as certain to remove the cause of the fearful disquiet, through which the country had passed or was passing. Not a word of doubt as to its soundness in principle or as to its national policy, was heard from the party, south or north. It was proclaimed too under circumstances particularly gratifying to the south. It was accompanied by an act, erasing from the statute book what she denounced as a dishonorable stigma, by assailing a valued and favored southern institution. She had long acquiesced in it for the sake of peace and of the Union, and from the same motive had in vain urged its application to all the territory that we then had or might thereafter acquire. In this she had the active support of her best and ablest friend, and one of the ablest statesmen of the Union, Mr. Calhoun. Much as he and the south had become dissatisfied with the compromise line—highly injurious and insulting as they believed it to have been to the south, and great therefore as they considered the error of its original adoption—they nevertheless were, for the sake of peace, willing even at the sacrifice of constitutional opinion and of feeling, to have had it extended throughout all our territory. But

the proposition was rejected by an irresistible majority of the House. On the 19th of February, 1847, Mr. Calhoun, in a speech opposing the compromise, said:—"One of the resolutions in the House, to that effect, (the continuance of the line,) was offered at my suggestion. I said to a friend, then, 'Let us not be disturbers of this Union; abhorrent to my feelings as is that compromise line, let it be adhered to in good faith, and if the other portions of the Union are willing to stand by it, let us not refuse to stand by it. It has kept peace for some time, and in the present circumstances perhaps, it would be better to continue it as it is.' But it was voted down by an overwhelming majority. It was renewed by a gentleman from a non-slaveholding State, and again voted down by an overwhelming majority." And this proposition was made too from the patriotic motives of its friends, when as was shown by an exhibit from the land office, produced by Mr. John M. Clayton, in support of his compromise plan of 1848, it would have appropriated exclusively to free labor ONE MILLION SIX HUNDRED THOUSAND SQUARE MILES, and left for slave and free labor *jointly*, BUT TWO HUNDRED AND SIXTY-TWO THOUSAND. The abolition spirit of the north, now so outraged, as it pretends, (with what sincerity let the facts tell,) at the repeal of the line, and at the judgment of the Supreme Court, denying the power to establish it, then in one solid phalanx, resisted its extension to the Pacific, although more than five times the extent of Territory would have been exclusively appropriated to their favored labor, and the remainder opened to that equally with the favored labor of the south. She had also in vain, and again with Mr. Calhoun's sanction, proposed to leave the constitutionality of the now repealed clause, (the Missouri restriction,) to the decision of the Judiciary. In both, her efforts were frustrated by northern votes; the representatives of that section, almost in mass, insisted not only on retaining the disparaging provision in its then limited operation, but upon applying it to every foot of subsequent territorial acquisition, and although the division offered by

the south would have had as against her the unequal result above stated. The last, and it is believed, if adhered to in good faith, the effective remedy which the south also with almost one voice supported, and which with the aid of patriotic, national northern friends, they succeeded in establishing, was the principle of popular sovereignty as announced in the Nebraska and Kansas Act, afterwards affirmed by the Cincinnati Convention, and in the strongest terms that our language furnishes, endorsed by Mr. Buchanan. This principle can, in no proper sense, be injurious to the south, or lead to consequences which might not have been or were not in fact anticipated. It was foretold that the Territory being thus alike opened to settlers north and south, that the greater population of the former, the greater facility of emigrating, and the greater need for emigration, caused by a denser and individually less thriving population, and generally a less fertile soil, would in all human probability, bring as settlers greater numbers from the north, and of course that every domestic institution, slavery above all others, would be settled by their voices; and yet, for peace, for the abandonment of the dishonoring badge of the compromise restriction, and above all, for the sake of the Union, the south not only assented to it, but joyfully, almost triumphantly proclaimed the doctrine as being fair in itself, divested of all degrading inferiority, calculated to heal the wounds inflicted by an unnatural fraternal strife, and to restore us to our ancient harmony and concord, and to secure us the high and lofty condition of one people, blessed by an inheritance of common freedom, won by the valor of a common ancestry, secured by one common government, enjoying a common present renown, and anticipating every thing of individual happiness and national power, that can belong to a free government, mighty, and justly honored in the estimation of the other governments of the world. Let neither the north nor the south point to the subsequent history of Kansas as a commentary on the doctrine. The blunders there committed can never be repeated. Their conse-

quences were so near being fatal, that the example has furnished its permanent remedy. The technicality too on which it was ultimately placed, that the congressional and executive vision was by the contrivance resorted to, forced into a blindness which unfitted them to see an attempted gross fraud on the popular will, has been overruled by the great tribunal of the public, and will hereafter be considered as an exploded doctrine of political pleading. Nor is it conceivable that the south which ever feels dishonor as a wound, can be brought by noisy politicians to fail in good faith to her northern associates and friends, by violating in this instance her often pledged word. It has been truly said, that there are men "to whom a state of order is a sentence of obscurity," who are "nourished into a dangerous magnitude by the heat of intestine disturbances," and who "by a sort of sinister piety, cherish in return the discords which are the parents of all their consequence." But these are not the men to create or guide public opinion. Let those, and they are to be found in every section of the land, be disregarded, and they will soon return to their native obscurity. It is but the agitation of the billows that brings them to the surface, where they float and offend. Let the waters be quieted and they sink, and the nuisance is removed. It is therefore in a spirit of constant and pure friendship for the south, in admiration of her citizens and her institutions, in a lively sensibility to her high reputation, in a conviction that such is her clear interest as well as duty, and in a never dying love of the Union, that the writer submits as, in his opinion, her obvious patriotic obligation, a frank, honest adherence to the principle of popular sovereignty as explained and attested by Congress, by the democratic party, and by President Buchanan.

Let the Charleston Convention, rejecting all such propositions as a congressional slave code, a repeal of the neutrality acts, and especially the legalizing of the foreign slave trade, a measure which would condemn us in the opinion of the savage as well as the civilized world, and offend against the long cherished sentiment of the great

and good in every section of our country, adopt the Cincinnati platform, with substantially but one addition. The Kansas Act, beside its own peculiar principle of popular right, contained also that of the Clayton compromise. For this latter, when originally proposed, nearly the entire south, as well as most of the democrats from the north, voted. That plan was to submit to the Supreme Court all questions concerning slave property, that might arise. This is provided for, and with a facility for its execution, in the 9th section of the last act; and no better or more peaceful mode can be adopted. Let therefore the convention declare their approval of it, and announce the determination of the great party which they will represent, to acquiesce in the judgment of that high tribunal, whatever that shall be, and the intelligence and patriotism of the country cannot fail to rally to its support.

If a Territorial legislature pass laws, establishing, protecting or prohibiting slavery, those who shall believe either of such laws unconstitutional, can readily institute legal proceedings in their Territorial courts, to have the question decided, and when decided under the section referred to, of the Kansas Act, (the 9th section,) a writ of error can be forthwith sued out to the Supreme Court of the United States, and there finally adjudicated. If that Court shall be of opinion, that slavery cannot be interferred with at all, by the Territorial legislature, nor by the people themselves, until meeting in convention to form a State Constitution, such laws, if prohibiting or abolishing slavery, will be adjudged unconstitutional and void. On the other hand, if the court shall be of opinion that they are within such legislative power, and that the power is constitutionally granted, then they will adjudge the same to be valid. Those who think that the question is involved in the Dred Scott decision, can have no objection to submit it to the same court and agreeing to be bound by the result; and now especially is every good citizen invoked to this clearly constitutional course, for the settlement of the question. The man who pretends to doubt the intelligence

and integrity of the Supreme Court, is beyond argument. He is either fool or knave. A tribunal which has settled so many constitutional controversies affecting the rights of the States, as well as of individual citizens, and in the end with the universal approbation of the country, may well be entrusted with this. Whilst their talents, professional attainments and high individual integrity, place them as far beyond the chances of error as is vouchsafed to humanity; the ages of the members leaving them no possible motive to indulge a low ambition, but animating them with the lofty one only of discharging their high functions with perfect impartiality, render the existence of prejudice impossible. A stern sense of official duty would rebuke, if such feelings were possible—to such men, the first promptings of any selfish or sectional considerations, and cause them to bring to the meditation and decision of the question nothing but the calm, unimpassioned mind of the judge. And in the present state of the country, how commanding are the motives for democratic harmony. These were strong enough before, but how much stronger are they now, that we have been startled by the late Harper's Ferry treasonable outbreak, sympathised in, and aided, as it evidently was, by large numbers in the free States. Men of foresight have for years been predicting that such would sooner or later be the result of the teachings of some northern men. Amongst the most dangerous of these are what, at different periods of his late career, have fallen from *Gov. Seward*, the now favored candidate of the Republican party. This gentleman is named from no hostility to him, personally, but because he is known to be a representative man, to be strong with his party because of his opinions on the question of slavery, and of his bitter unrelenting denunciation of the institution and its supporters. The zeal of thousands in his behalf is from a conviction which they think they have every reason to entertain, that his election would at an early day result in its extinction, not constitutionally, for that they know is impossible, but by force or fraud, unchecked by the influence and power of the general

government. His private character, his talents and his social qualities, however excellent these may be, but serve in this particular to increase his power to delude and ruin, and to make him the more dangerous. His speech at Rochester was full of suggestions not only insulting to the south, but calculated to produce a servile insurrection. No such purpose, it is trusted, impelled him, but an unchastened ambition, greedy of success, has made him regardless of the means. He appeals therefore to the strongest if not the worst passions of our race. He encourages the prejudices of a philanthropic and religious fanaticism. He excites to violence a blind, unlicensed love of freedom, a freedom not under but above the law. He seeks to madden a dangerous unreflecting enthusiasm. He endeavors to stimulate the hopes of northern political aspirants; and with this view, and from supposing that in it lay his only chances of triumph, he denounces this domestic southern institution, with which the south has grown up, one closely connected with their habits and their interests, and upon whose maintenance, ever since this unfraternal war has been carried on, they believe their honor to be so intimately connected. He condemns it as at variance with the laws of nature and of God, and boldly asserts that its extinction is certain and near at hand, and invokes the early coming of the day. Extracts from his speech could be given which would fully sustain this statement. They are not given because it is hoped and believed that they would be too offensive to the patriotic sentiment of the country—that sentiment so feelingly encouraged in the parting advice of WASHINGTON. How vitally important is it then, that all practical, immaterial differences of opinion on this question of popular sovereignty, and on every other likely to weaken the democratic party, be at least set aside in the coming presidential contest. On these we can well agree to disagree. Whether a territorial people under a territorial government can exercise the questioned power-over-slavery, before or only when in convention, to form a State constitution, can be of no real importance to north or

south. But a few years, from the tendency of our people to emigrate to new territory, can intervene between the two periods. But the success of the Republicans will be a calamity, it is feared, beyond remedy, perpetual and fatal. How controling then are the inducements to harmony with the democracy, and how important that its members in the free States, those who have ever resisted the crazed, ruinous free soil movement, and from a spirit of brotherly affection, the result of a pure patriotism, shall not be impeded by any dogmas as to sovereignty, in their nature easily misapprehended, calculated to diminish their power, and in all likelihood certain to give the vote of every one of the free States to the success of the Republican nominee, and who it is confidently said by his friends will be Governor Seward. This is the only question which stands in the way of his defeat; agreeing on that, and the triumph of the national candidate, and the preservation of our institutions, will be beyond all reasonable doubt.

Proscription for birth-place, except as it is meeting a certain and speedy death in one or two localities, is among the things that were. Citizenship, however acquired, whether by birth or choice, now gives equal rights, as the Constitution and laws intend and provide. Political religious proscription has also had its day—a tyranny so justly characterized as early as January, 1774, in a letter to a friend, by Mr. Madison, one of the purest and ablest statesman the world has ever known, as "that diabolical, hell-conceived principle of persecution." It has died, unwept and unhonored, except by the fanatic, who would, if he dared, burn his fellow man at the stake, as the best means to convince him of the truths and mercies of Christianity, and of ensuring him the consolations of a Christian death, as well as of securing for himself, hereafter, the blessings of Heaven. Both of these are remembered by their former dupes with but surprise at their folly and injustice, and regret and shame at the troubles and outrages which they produced wherever they had sway. Almost all of the original questions which divided the two

great parties of the country, both of which were equally patriotic, have been, in a great measure, settled. Such as are open can be farther discussed in a patriotic spirit, consistent with the general harmony which is so important to our prosperity and good name. That, however, of slavery, comparatively of modern origin, remains, as before stated, to give us serious disquiet. Congress, the Cincinnati Convention, and President Buchanan, all united in the opinion that this could be adjusted with equal regard to the rights and feelings of all sections, by the doctrine of popular sovereignty contained in the legislation of 1854. In the language of the President, by virtue of that doctrine, it may soon be brought to a "finality." In this opinion the almost entire South, and the whole democratic North, concurred. That it is a sound opinion, no unprejudiced reasonable man can doubt. It will, too, forever put an end to the hopes of those who believe, or profess to believe, in an "irrepressible conflict" between the laboring systems of the country. No man, not even the demagogue, however unscrupulous, will then be absurd enough to express such an opinion, or to appeal, for its support, to popular prejudice. "As all nature's difference keeps all nature's peace," so, in this very difference, will be found the best elements of our prosperity and strength. The North will rejoice in the productions of the South, which can alone spring from one system of labor, and the South in those of the North, which can best perhaps arise from the other, whilst, in the view of the world, we shall present the glorious spectacle of an enlightened people, harmonious and powerful in our very contrasts, living under State governments adequate to all our local wants, and under a general government subjected to all the restraints which freedom requires, and clothed with all the powers necessary to our protection; a government, in the language of the greatest of our northern statesmen, (now, unfortunately, no more,) which will "become a vast and splendid monument, not of oppression and terror, but of WISDOM, and of PEACE, and of LIBERTY, upon which the world may gaze with admiration FOREVER."

A SOUTHERN CITIZEN.

THE

JUST SUPREMACY OF CONGRESS

OVER

THE TERRITORIES:

INTENDED AS AN ANSWER TO

THE HON. STEPHEN A. DOUGLAS,

ON

POPULAR SOVEREIGNTY.

By GEORGE TICKNOR CURTIS.

BOSTON:
A. WILLIAMS AND COMPANY,
100, Washington Street.
1859.

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SUPER ANTIQUAS VIAS.

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INTRODUCTORY NOTE.

It is, perhaps, scarcely necessary to say, that this pamphlet was written as an answer to the article by the Hon. Stephen A. Douglas, which originally appeared in Harpers' Magazine, entitled "The Dividing Line between Federal and Local Authority; Popular Sovereignty in the Territories;" and which has since been republished in a separate form. Private engagements and other circumstances have delayed the publication of my Essay longer than I had originally intended; but I believe that the subject is not likely to lose its interest. The impersonal style in which it is written is to be accounted for by the fact that it was designed for publication in some periodical work, and it was not convenient to make any change in this respect after I determined to publish it in a pamphlet. I should add, that I have seen no other of Mr. Douglas's writings on this subject than the article to which this pamphlet undertakes to reply; nor have I read the papers written by the Attorney-General, Mr. Black.

G. T. C.

Boston, Nov. 5, 1859.

BOSTON:

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THE

JUST SUPREMACY OF CONGRESS

OVER THE TERRITORIES.

THE appearance, in a popular magazine, of an article on a constitutional question, written by a prominent candidate for the Presidency, with his name prefixed to it, is something new. We do not know that there can be any reasonable objection to this mode of promulgating or defending political opinions. It has one advantage over electioneering speeches, inasmuch as what is written is likely to be more deliberate than what is spoken; and if our public men would employ the pen a little more, and the tongue a little less, we think that they and the country would be gainers. On the other hand, what is thus carefully prepared in an elaborate article, as the doctrine on which a statesman means to challenge the suffrages of his countrymen for the highest office in their gift, brings him in a peculiarly responsible attitude before the tribunals of contemporary criticism and public judgment. What he says and maintains in such a form is not like a Congressional speech, which may be thrown off in the heat of debate or while defending or attacking a particular measure, and which is liable, even if not likely, to be forgotten when the interest in the occasion has passed. Mr. Douglas steps forward boldly and frankly, as becomes him, and puts on record, in a journal of a very wide circulation, his opinions upon a grave constitutional question, which enters largely into the politics of the day; and the doctrine which he thus promulgates is notoriously relied upon by his friends, as the great topic, the championship of which is to carry him into the White House. He certainly will not

be disposed to complain if his opinions thus put forth are subjected to examination in the same form of discussion.

We shall begin what we have to say upon this subject with the free admission, that there are a good many elements of popularity both in Mr. Douglas's character and in his present position. The public man who presents himself as an advocate for the right of self-government for any people, however they are situated, will always command popular sympathy in this country. But we are not now concerned with Mr. Douglas's chances or means of political success, but with the soundness and correctness of his constitutional opinions. Whether he is or is not of that order of men who "would rather be right than be President," we do not presume to decide; but we are sure for ourselves, that, having no personal interest in the matter, we would rather be right than be able to prevent him or any other man from reaching the Presidency, if we had the power of all the nominating conventions or of all the voters in the land.

It is the purpose of Mr. Douglas's article to maintain, that the people of a Territory have the right to decide, independently of the will of Congress, whether the institution of slavery shall or shall not exist among them while they are in the Territorial condition. On a cursory reading of his paper, we were a little at a loss to determine whether he meant to be understood that this power belongs to the people of a Territory because the organic act bestows upon them general legislative power, or, as in the case of Kansas, declares that they shall be free to form their own institutions in their own way; or whether he holds that the people of a Territory are originally free to establish or prohibit slavery without any Congressional declaration or grant of such a power, or even against a Congressional prohibition. But, on a more careful perusal, we find that his argument goes the entire length of maintaining, that, in reference to what he calls their local concerns and internal polity, the people of a Territory are absolutely sovereign in the same sense in which the people of a State are sovereign. In order to establish what he calls "popular sovereignty in the Territories," Mr. Douglas undertakes to define the dividing line between federal and local authority; and he places it, in respect to the Territories, substantially where it is in respect to the States. He sums up the whole discussion in the following "principle," — "that every distinct political

community, loyal to the Constitution and the Union, is *entitled* to all the rights, privileges, and immunities of self-government in respect to their local concerns and internal polity, subject only to the Constitution of the United States."

A very important question, therefore, arises upon Mr. Douglas's proposition; namely, What does he mean when he says that the people of a Territory are "entitled" to all the rights of self-government? Are they "entitled" morally, or legally? as a matter of comity, or as a strict constitutional right? If Mr. Douglas were asked this question as a jurist, in a matter of private right involving a correct answer to it, would any man be disposed to risk a litigation upon the correctness of the views by which Mr. Douglas undertakes to guide and enlighten the political opinions of his countrymen? In our judgment, the dividing line between federal and local authority, in respect to the Territories, would have to be drawn more in accordance with settled principles than it is drawn by him, before it would be safe to admit the soundness of his very sweeping conclusion.

Nor is he any more satisfactory to us as a statesman than he would be as a jurisconsult. The importance of a clear and reliable answer to the question, "In what sense and how are the people of a Territory *entitled* to the full and absolute right of self-government?" will be apparent to any one who will consider that polygamy is an institution which must be within this right, if the right exists in the unqualified extent for which Mr. Douglas claims it. This, and a variety of other institutions which might be against the will of Congress and the entire policy of a Christian civilization, would come within his principle. The vast inconvenience of his doctrine, therefore, renders it in the highest degree necessary to ascertain where his opinions, if they are to become predominant in our government, are to lead us; for if it be true, as he seems to us to maintain, that the mere fact of their organization into a distinct political community entitles the people of one of the Territories of the United States, before they are admitted as a sovereign State of this Union, to make what laws or institutions they see fit, upon the plea that such laws or institutions relate to their internal concerns, it is quite essential to our peace and safety to know whether they are so "entitled" in a moral sense only, or in a strict constitutional and legal sense. If it is only as a moral claim that we are to regard the alleged

right, then, in each particular case, Congress can consider the expediency of yielding what is demanded. If, on the other hand, the right is a constitutional and legal one, Congress can exercise no volition in the matter. Still, it occurs to us to ask, if the latter is the true character of the supposed right, what was the necessity and what is the meaning of Mr. Douglas's grant, made in his own Kansas-Nebraska Act to the people of those Territories, of "perfect freedom to form and regulate their domestic institutions in their own way"? Why repeal the Missouri Compromise, and enact the principle of "non-intervention" by Congress, if the people of a Territory, after they are made a Territory, are "entitled" to say that Congress shall not "intervene" in respect to their domestic institutions?

But it is not our purpose to anticipate the course of Mr. Douglas's argument. We shall endeavor to state and to answer it fairly, and shall then suggest what seem to us to be the insuperable difficulties which surround it.

The first part of Mr. Douglas's paper is occupied with a statement that the American Colonies, in their struggle with Great Britain, placed themselves upon the assertion of a right to legislate in their Colonial Assemblies respecting their local concerns, free from all interference by the English Parliament. The use which he makes of this is sufficiently apparent from his proposition, that "the dividing line between federal and local authority was familiar to the framers of the Constitution" [of the United States], because they had had a controversy with their mother-country respecting the dividing line between the authority of Parliament and the authority of their Colonial Legislatures. Nothing can be more inaccurate than the idea of an analogy between the question which our fathers raised with the Imperial Government, and the question, under the Constitution of the United States, respecting the power of Congress over the Territories. In the first place, we are to remember that it was no easy matter, even for Englishmen of liberal principles of government and with just feelings towards their American brethren, to state what the true theory of the English Constitution then was on the subject of the right of Parliament to bind the Colonies. Lord Chatham, it is true, in one of the most magnificent periods ever uttered in St. Stephen's, undertook a distinction between the regulation of trade and the levying of taxes; and, in his haughty and daring dogmatism, he

went so far as to assert that "there is no such thing, no such idea, in this Constitution, as a supreme power operating upon property." Burke, on the contrary, refused to discuss the *right* of Parliament to bind the Colonies, in respect either to trade or to taxation. He regarded the abstract merits of the dispute as —

> "That great Serbonian bog,
> Betwixt Damiata and Mount Cassius old,
> Where armies whole have sunk;" —

and he bent the whole force of his splendid genius to the argument, that any exercise of the right, or attempt to exercise it, was inexpedient and dangerous. There is as little in the views maintained, in that controversy, on our side of the water, that can furnish a useful analogy, or aid us in determining what is the true relation of our Federal Government to those creatures of its legislation which we call the Territories. In the early stages of their contest with England, the people of the Colonies relied upon their charters and fundamental grants of political power, as so many assurances and guaranties of a limited right of independent local legislation. At a later period, when the contest grew closer, but when it was still necessary to secure a reconciliation if possible, they conceded the right of Parliament to bind them in matters of trade, but denied it in taxation. Soon, however, all consideration of their rights as British subjects, whether under charters or under the general principles of the Constitution of the Empire, was merged in the grand natural right of revolution, on which they constructed their "dividing line" between imperial and local authority. A triumphant Revolution, and an abrogation of all political power save their own, put an end to all disputes about their rights as subordinate or dependent communities. This portion of our history, therefore, can afford very little aid in drawing "the dividing line between federal and local authority" under a Constitution which no one has yet, happily, found it necessary to subject to any revolutionary process, but which all parties, by whatever name they are known, must administer upon rules that are consistent with the preservation of its just authority. The Constitution of the United States was not made for the purpose of embodying the principles of the Revolution. It was made in order that the fruits of that Revolution — the national independence — might not be lost in a state of anarchy, or in the tyranny to which anarchy inevitably tends. It was made in order that

a regulated, republican liberty, founded upon order and system and positive institution, might save us from the domination of mobs, and from their natural consequence, — the oppression of military despotism.

The next step in Mr. Douglas's argument for "popular sovereignty in the Territories" is taken upon the action of Congress, before the Constitution was adopted, respecting the North-Western Territory ceded by Virginia to the Union; and, strange to say, he confines his survey of this part of his subject to Mr. Jefferson's measure for the government of the Territory, which was adopted in 1784. He is quite correct in saying that this Jeffersonian plan of government for the tracts of country ceded, or to be ceded, to the Union by the States, contemplated the formation of political communities which it denominated "new States;" that these "new States" were to be, in general, the same kind of communities as those which we now call "Territories;" that they were to have temporary governments, on which was to be conferred a general power of legislation; and that these governments were to remain until the communities should become States proper by admission into the Union. But, as to all the residue of the legislation which preceded the Constitution, Mr. Douglas is wholly silent. He represents Mr. Jefferson's plan as standing on the statute-book, "unrepealed and irrepealable," when the Convention assembled to form the Constitution. He omits to notice the Ordinance for the government of the North-Western Territory, adopted by Congress July 13, 1787, while the Federal Convention was sitting, and which was actually communicated to the Convention; and, insisting that Mr. Jefferson's plan still stood as the existing law when the Constitution was framed, he makes the bold assertion, that the dividing line between federal and local authority was known to the framers of the Constitution, as a line which excluded from the power of the Federal Union all legislation respecting the internal concerns of Territories. This is not creditable to a person of Mr. Douglas's distinction. The simple truth is, that Mr. Jefferson's plan never took effect so far as to have a "new State" or Territorial government, of the kind contemplated, formed under it; that the Ordinance of July 13, 1787, was framed to supersede, and actually repealed it, in reference to the North-Western Territory; that this Ordinance made numerous, and in some cases very strict, fundamental provisions concerning personal rights and relations, one of which

related to slavery; that it was before the framers of the Constitution when they made the so-called Territorial clause, and when they passed the Constitution through its final draught; and consequently there is the strongest reason to contend, that "the dividing line between federal and local authority" in respect to Territories, as it had been practically drawn by the existing Congress, and as it was repeated by the Congress which, under the Constitution, afterwards re-enacted the Ordinance, was understood, in those days, as a line which included in the federal power any and all direct legislation, upon personal rights and relations, in such Territories, which it might be the pleasure of Congress to exercise.

Stepping over this great *hiatus* which Mr. Douglas has made in our national history, we come to the following singular proposition: —

"In the formation of the Constitution of the United States, the Federal Convention took the British Constitution, as interpreted and explained by the Colonies during their controversy with Great Britain, for their model; making such modifications in its structure and principles as the change in our condition had rendered necessary."

After running out what he considers the parallel between the two governments, and suggesting the views which our fathers maintained concerning the true relations of the mother-country to the Colonies, he asks if the framers of the Constitution can be supposed to have conferred upon Congress "that unlimited and despotic power over the people of the Territories which they had resisted with their blood when claimed by the British Parliament over British Colonies in America." This is somewhat *ad captandum*, and we doubt not Brother Jonathan will be struck with its force. But we believe it to be entirely unsound.

Probably Mr. Douglas stands alone in making the assertion, that the Constitution of the United States was *modelled* on the Constitution of Great Britain, as the latter was understood either by the colonists or by any one else. It has sometimes been charged as a reproach, that certain members of the Federal Convention leaned too much in their plans and wishes towards the English Constitution; but it has never been said before, so far as we know, that the whole body regarded that Constitution as their "model." Certainly it would not be difficult to show that the copy has so far departed from the "model," that very little resemblance can be detected. But suppose

it were, as Mr. Douglas imagines: does it follow that the framers of our Constitution could not have designed to vest in Congress a general power to govern the Territories or the subordinate communities which they might have occasion to establish outside of the limits of the original States, because, as colonists, they had contended for their rights under positive charters, or because they threw themselves upon revolutionary and natural rights? The two cases are totally unlike. When the Revolution commenced, the Colonial governments had long been in existence, with their several charters and other grants of political authority; and the early dispute, as we have said, was mainly on the construction and operation of those grants. When the Constitution of the United States was established, there was not a single Territorial, Colonial, or subordinate government, organized by the federal power, in actual existence anywhere. All was as yet in the future, or, as lawyers say, *in fieri*, except that certain fundamental principles, some of them dealing with minute details, had been laid down by the old Congress in the Ordinance for the government of the North-Western Territory. But one of the acknowledged reasons for making a stronger government for the Federal Union was the alleged incapacity of the confederacy to provide for the management and government of the new countries then already come and coming into the possession of the United States. Under these circumstances, there is certainly nothing remarkable in the supposition, that the framers of the Constitution, considering that they had to meet the want of a power to establish political communities of a subordinate nature on the borders of the Union, and that the character of those communities would materially affect the welfare of the Union, should have intended to give to Congress the power of shaping the institutions of those new regions, just as the wisdom of Congress and the policy of the country might require, with a view of their being ultimately admitted into the Union on an equal footing with the original States. There can be no rational doubt, that, immediately after the Constitution was adopted, and for a long subsequent period, it was understood that Congress had been invested with this power: for it was exercised repeatedly, and in a great variety of ways; and, on the particular topic of slavery, it was exercised sometimes against and sometimes for the institution.

The particular clause in the Constitution in which this power has,

until recently, been supposed to have plainly resided, so far as it required a positive text, is the clause known as the Territorial clause: —

"Congress shall have power to dispose of and make all needful rules and regulations respecting the Territory or other property belonging to the United States." (Art. iv. sect. 3.)

Mr. Douglas dismisses this source of power with the mere assumption, that "Territory" means, in this clause, nothing but landed property; which meaning he rests upon the assertion, that, at the time when the Constitution was formed, the word "Territory" had "never been used or understood to designate a political community or government of any kind, in any law, compact, deed of cession, or public document." In this, we think, he is entirely mistaken. The very first clause in the Ordinance of 1787 ordains "that the said Territory, for the purposes of temporary government, be one district; subject, however, to be divided into two districts," &c.; and these words "Territory" and "district" are used throughout the Ordinance as convertible terms, describing the *political community* for which the Ordinance makes certain provisions of fundamental law. Aside from this verbal criticism, however, Mr. Douglas surely does not require to be informed that the history and surrounding facts relating to this clause of the Constitution have again and again been made the basis of an argument, which regards it as a grant of political jurisdiction as well as of proprietary interest; and we humbly think it becomes him to answer that argument by something more than a begging of the question. A far greater authority than he, the greatest authority in the interpretation of the Constitution since its actual framers passed away, — Chief-Justice Marshall, — was accustomed to regard this clause as an indubitable source of political power. In a case, in the year 1810, in which he had occasion to pronounce the opinion of the Supreme Court on a question relating to the authority of Congress to confer a capacity on the citizens of a Territory to sue and be sued in a court erected by Congress for that Territory, he said, —

"The power of governing and legislating for a Territory is the inevitable consequence of the right to acquire and to hold territory. Could this position be contested, the Constitution of the United States declares that 'Congress shall have power to dispose of and make all needful rules and regulations respecting the Territory or other property belonging to the United

States.' Accordingly, we find Congress possessing and exercising the absolute and undisputed power of governing and legislating for the Territory of Orleans. Congress has given them a legislative, an executive, and a judiciary, with such powers as it has been their will to assign to those departments respectively." *

On a more recent occasion (in 1828), when Bushrod Washington, Johnson, Duval, Story, Thompson, and Trimble, were his associates, he did not hesitate, in pronouncing their opinion and his own, again to assign the same force and meaning to the Territorial clause, although he admitted that the right to govern territory might also be derived from the right to acquire it. "Whichever may be the source whence the power is derived," said the Chief-Justice, "the possession of it is unquestioned. . . . In legislating for them [the Territories], Congress exercises the combined powers of the General and of a State Government." †

While Mr. Douglas refuses to recognize that source of power which such jurists as Marshall, Washington, Story, Thompson, and their associates, regarded as amply sufficient, — namely, the Territorial clause, — he assigns the right of Congress to institute temporary governments for the Territories to the clause of the Constitution which gives power to admit new States into the Union; which, he says, taken in connection with the clause which empowers Congress "to make all laws which shall be necessary and proper" to that end, "may fairly be construed to include the right to institute temporary governments for such new States or Territories, the same as Great Britain could rightfully institute similar governments for the Colonies; but certainly not to authorize Congress to legislate in respect to their municipal affairs and internal concerns, without violating that great fundamental principle in defence of which the battles of the Revolution were fought."

We have already had occasion to suggest, that the battles of the Revolution were not fought for the purpose of ascertaining the just powers of the British Government over its Colonies, or to establish one or another doctrine of the English Constitution; but that they were fought for the expulsion of that Constitution and all its relations from

* Serè *vs.* Pitot, 6 Cranch, 332.

† American Insurance Company *vs.* Canter, 1 Peters, 511.

our land. Not to repeat ourselves on this point, therefore, we now proceed to consider Mr. Douglas's theory, which we understand to be this: —

That, while the right to acquire territory for the purpose of enlarging the limits of the Union by the admission of new States, and the power to admit them, necessarily involve the right to institute temporary governments, yet that the right to create a legislative department in such temporary governments, as part of the political organization, extends only to the conferring of legislative power on the people of the Territory, but does not include the power of legislating over them or for them. In support of this distinction, he refers, by way of illustration, to the right of Congress to create inferior courts, as an instance where Congress may *confer* a power which they cannot *exercise*, because Congress cannot render a judgment, or hear or determine a cause. In the same way, he says that Congress may *confer* the executive, legislative, and judicial functions on proper officers in a Territory, but that they cannot *exercise* one of those functions within the Territory.

Assuming, for the present, that the Territorial clause in the Constitution is out of the question, and that the right to acquire territory, and to form and admit new States out of it, is the source of the power to govern it, we may fairly ask, in the first place, where is the obligation to be found which imposes the necessity for creating any legislative department within the Territory when a temporary government is instituted? The power of Congress to govern, when deduced from the source above mentioned, is not less broad and general than when it is deduced from the clause giving authority to make all needful rules and regulations. In either case, there is no express limit to the power of Congress; and none is implied beyond that which the judgment of Congress may assign. The power to govern, as deduced from the power to acquire, is entirely analogous to the power which results from conquest, which is only one of the forms of acquiring; and it is as broad and universal as any political power can be. There is, therefore, no reason for saying that Congress is under any obligation to create any particular kind of temporary government for a Territory. It may be highly expedient and proper to make it a republican government, and to give to it the three regular departments of such a government,

because the Territory is at some day to be admitted into the Union as a State; but we shall look into the Constitution in vain for any direction on the subject: nor can any obligation concerning the kind of government be deduced from the nature of the power, whether that power rests on one or another provision of the Constitution.

Again: if we concede the power to institute temporary governments for the Territories, as Mr. Douglas does, where can we draw the line between mere political organization and that kind of regulation which Mr. Douglas would call legislation on municipal affairs and internal concerns? What is the institution of a government, but the enactment of the fundamental law by and under which a people are to live? If a power outside of the limits of such a people is authorized to prescribe the departments of their government, the qualifications of officers and electors, and their several functions, does not the exercise of this power touch their "municipal affairs and internal concerns"? If Congress can create a legislative department in a Territorial government, can they not give or reserve just so much legislative power as they may see fit to confer or withhold? Can they not restrict the subjects of that legislative power, or make them general and universal, at pleasure? Can they not enact or adopt a code? Can they not make the reservation of a right to annul Territorial laws, or concede the legislative power without such reservation, as they may see fit? Can they not confer the legislative power on any officers to whom they may think proper to confide it? All these things have hitherto been assumed in the action of Congress to be within their legitimate functions; and, if this assumption has been wrong, the legislation of seventy years has been a series of wrongs and usurpations.

The illustration put by Mr. Douglas, of a power which may be *conferred*, but which cannot be *exercised* directly, does not afford a distinction applicable to the question. Congress cannot exercise judicial power; although it may create a court, and confer upon it judicial power. But, in the matter of instituting a government, it is legislative, not judicial power, that is exercised. The authority which can exercise the power of saying what a government is to be may make a subordinate legislature, if it sees fit; and it may confer an unrestricted or a restricted legislative faculty; and, so far as it has not parted with its original power, it may continue to exercise it. Upon any other suppo-

sition, there is no mode in which Congress can retain any control over a Territory or its inhabitants, after Congress has once erected a temporary government, or created a political organization of the people of such a Territory.

We have referred to the authority of Chief-Justice Marshall, and that of the Court over which he presided, in support of the position that the legislative power of Congress over the Territories is a plenary power, from whatever source in the Constitution it may be derived. We will next show that the Judges of the Supreme Court of the United States who are now upon the bench held the same views until the particular question respecting slavery arose in the Dred Scott case.

In 1851, the question came before the Supreme Court of the United States, whether a law enacted by a Territorial legislature, and supposed to be in conflict with a provision of the Federal Constitution, could be declared by the Supreme Court to be inoperative. The opinion of the Court was pronounced by Mr. Justice Daniel; and after pointing out the distinction between laws passed by States and laws passed by Territories, and showing that the control of the former only is vested in the Supreme Court, when they violate the Federal Constitution, he added, "It seems to us, that the control of these Territorial governments properly appertains to that branch of the government which creates and can change or modify them to meet its views of public policy; viz., the Congress of the United States." In another part of the same opinion, he shows that Territorial governments may be invested with general legislative power, and, at the same time, "be subjected to proper restraints from their superior;" viz., Congress.*

This decision points out very clearly the true remedy against improper or objectionable legislation by a Territorial legislature. It places the remedy in the hands of Congress, — the political "superior," as Mr. Justice Daniel appropriately calls the Federal Government, in its relation to the governments of the Territories. This idea of the "superior" power is entirely inconsistent with the "dividing line between federal and local power" which Mr. Douglas undertakes to draw. Either he is wrong, or the judges who attributed to Congress the

* Miner's Bank of Dubuque *vs.* Iowa, 12 Howard, 1.

superior and paramount authority were wrong; for it is clear that the subject of legislation of which the judges were then speaking — namely, a bank-charter — was a matter in the strictest sense belonging to the municipal affairs and internal concerns of the Territory: and, moreover, that Territory was one whose legislative power, according to the organic act, embraced "all rightful subjects of legislation;" while, at the same time, the Territorial laws were subjected by the same act to the revision of Congress.

Still more recently (in 1853), a question was before the Supreme Court, involving the validity of acts done by the Federal Government in California, after the conquest of that country, and while it was held as a Territorial possession. Mr. Justice Wayne pronounced the unanimous decision of the Bench, in which he said, —

"The Territory had been ceded as a conquest, and was to be preserved and governed as such until the sovereignty to which it had passed had legislated for it. *That sovereignty was the United States, under the Constitution, by which power had been given to Congress to dispose of and make all needful rules and regulations respecting the Territory or other property belonging to the United States, with the power also to admit new States into this Union, with only such limitations as are expressed in the section in which this power is given.* The government, of which Col. Mason was the Executive, had its origin in the lawful exercise of a belligerent right over a conquered Territory. It had been instituted during the war, by the command of the President of the United States. It was the government when the Territory was ceded as a conquest; and it did not cease as a matter of course, or as a necessary consequence of the restoration of peace. The President might have dissolved it by withdrawing the army and navy officers who administered it; but he did not do so. Congress could have put an end to it; but that was not done. The right inference from the inaction of both is, that it was meant to be continued until it had been legislatively changed. No presumption of a contrary intention can be made. Whatever may have been the causes of delay, it must be presumed that the delay was consistent with the true policy of the government; and the more so, as it was continued until the people of the Territory met in convention to form a State government; which was subsequently recognized by Congress, under its power to admit new States into the Union.

"In confirmation of what has been said in respect to the power of Congress over this Territory, and the continuance of the civil government established as a war-right until Congress acted upon the subject, we refer to two of the decisions of this Court, in one of which it is said, in respect to the treaty by which Florida was ceded to the United States, 'This treaty is the law of the

land, and admits the inhabitants of Florida to the enjoyment of the privileges, rights, and immunities of the citizens of the United States. It is unnecessary to inquire whether this is not their condition, independently of stipulations. They do not, however, participate in political power: they do not share in the government until Florida shall become a State. In the mean time, Florida continues to be a Territory of the United States, governed by virtue of that clause in the Constitution which empowers Congress to make all needful rules and regulations respecting the Territory or other property belonging to the United States. Perhaps the power of governing a Territory belonging to the United States, which has not, by becoming a State, acquired the means of self-government, may result necessarily from the facts that it is not within the jurisdiction of any particular State, and is within the power and jurisdiction of the United States. The right to govern may be the natural consequence of the right to acquire territory' (American Insurance Company *vs.* Canter, 1 Pet. 542, 543).

"The Court afterwards, in the case of the United States *vs.* Gratiot, 14 Pet. 526, repeats what it said in the case of Canter, in respect to that clause of the Constitution giving to Congress the power to make all needful rules and regulations respecting the Territory or other property of the United States." *

Thus it appears, that, for a period of more than forty years, the Supreme Court has been in the habit of referring to the Territorial clause of the Constitution as an undoubted source of municipal jurisdiction; and has, in the most explicit terms, placed the sovereignty of all Territories in the government of the United States. We are therefore warranted in saying, that if any constitutional lawyer, North or South, had been asked, before the year 1856, to believe that the Territorial clause confers no municipal authority, and that "popular sovereignty" is a sound doctrine, the answer would have been, that these propositions are to be received when the Supreme Court of the United States has judicially unsaid what it has judicially said for nearly half a century.

We have thus endeavored to show, that when Mr. Douglas denies to Congress all legislative authority over the Territories, other than to institute temporary governments, he is opposed to the whole practice of Congress, and to the former and the present members of the Supreme Court of the United States; and that he is not consistent with himself, since the power to institute a government necessarily implies the authority to determine what powers that government shall possess, and

* Opinion of the Court in the case of Cross *vs.* Harrison, 16 Howard, 164.

what subjects shall be included within its legislation. We shall now refer to another of the arguments which he adduces in support of his position. We understand him to maintain, that in the word "States," in those clauses of the Constitution which require the surrender of fugitives from justice and service, and which embrace the prohibitions and restraints upon State legislation, are included the Territories as well as the States proper. Hence he argues that the people of a Territory are sovereign in the same sense in which the people of a State are sovereign, and that the sovereignty of the former is restrained and limited by the Federal Constitution in the same way in which the sovereignty of a State is restrained. This brings us to the great practical objection to Mr. Douglas's whole theory of "popular sovereignty in the Territories."

The framers of the Constitution of the United States saw occasion to subject the sovereignties of the "States" to certain restraints and prohibitions. These would all have been ineffectual and nugatory, without some means of enforcing them; and accordingly the judicial power of the United States was provided, and made to extend to "cases arising under the Constitution." In providing the machinery by which a case (arising under the Constitution because a State law is supposed to conflict with one of its provisions) may be brought within the Federal Judicial Power, the statesmen of that day framed a section of the Judiciary Act, by which such cases can be drawn into the Supreme Court of the United States, even though they originate in a State Court. But it has been repeatedly decided, that the law, whose conformity with the Federal Constitution can thus be passed upon by the Federal Judiciary, must be a law enacted by a State proper, — that is, a member of the Union; and that laws passed by Territorial legislatures are not included in this machinery of Federal judicial control. If, then, Mr. Douglas's doctrine is sound, that the word "States" in the prohibitory clauses of the Constitution includes "Territories," the first thing that strikes us is, that there are no means provided by which the Federal Government can enforce these provisions of the Constitution against the legislation of Territories, unless Congress reserves to itself a power directly to annul the Territorial laws. Such a reservation is plainly inconsistent with Mr. Douglas's theory; for he insists that Congress has no power to control the people of a Territory in respect to

their domestic concerns. But as he qualifies this position with the reservation, that their domestic legislation must not violate the provisions of the Federal Constitution, he may still retain to Congress so much superintending power as is necessary to preserve the Federal Constitution intact. But the difficulty in the way of his theory is, that if the Constitution, when it says the "States" shall not do certain things, also means the "Territories," we have got two classes of sovereignties in our system, both of which are subjected to the same restraints by the Federal Constitution; but those restraints are to be enforced, as against the States, by the Judicial, and as against the Territories by the Legislative, department of the Federal Government.

This discrepancy naturally leads to the inquiry, what reason there is for supposing that when the framers of the Constitution provided that no "State" shall pass laws impairing the obligation of contracts, or emit bills of credit, &c., they intended to be understood as extending these same prohibitions to "Territories," which could only owe their existence to Acts of Congress. It is notorious, that all these prohibitions were inserted in the Constitution to prevent the repetition of acts of wrong that had previously been committed by the legislatures of sovereign States, members of the Union; or to secure the just working of the powers conferred on the National Government. But if we suppose that the framers of the Constitution intended to have Congress invested with power to erect temporary governments in regions beyond the limits of the then existing States, as Mr. Douglas concedes they did, there is no conceivable reason why they should not have left to Congress to put upon those governments just such restraints as the occasion might require; nor why they should have included those governments in the prohibitions addressed to the "States;" nor why they should have used the word "States" alone, if they meant "States" and "Territories." The view that was taken by Mr. Justice Daniel explains the true reason why Congress should be regarded as the "superior" of the Territories; for there may be a vast deal of legislation by a Territory, which would violate no provision of the Federal Constitution, but would yet be exceedingly objectionable, and ought to be corrected, and could be if Congress has the superior authority attributed to it by the Supreme Court in the case to which we have referred. But if Congress is the political "superior" only so far as to

see that the Federal Constitution is not infringed, then indeed the Territorial legislature, which is the mere creature of Congress, may make lawful a plurality of wives, or establish the most pernicious system of banking, or create a most objectionable system of divorce, — may make the Territory a nuisance and a pest to the surrounding communities; and there will be no earthly power that can interfere, whether Congress has or has not reserved the right to revise the Territorial laws. For if Mr. Douglas's doctrine is correct, that, in all domestic affairs, the people of the Territory are sovereign just as the people of a State are sovereign, all such reservations are simply void.

We protest, therefore, against this popular cry, which seeks to class the pretended sovereignties of the Territories with the sovereignties of the States. We are neither anxious nor alarmed about the matter of slavery. We are not disposed to look at every doctrine solely as it affects this particular institution. We seek no sectional triumphs on this or any other subject. In a particular case of real fitness for a fair and unbiased decision as to their true interests, we should have no unwillingness to see the people of a Territory invested, by Act of Congress, with full power to decide whether they would have slavery or not; although we never could see its propriety in the case of Kansas, and think that the whole country has infinite cause to regret, that, in this case, a new and unoccupied region was made a battle-field for the contending sections of the Union. But, however this may be, we protest against an effort, by means of a clamor about popular sovereignty, which tends to wrench the Constitution out of its appropriate sphere, to render its harmonious action impracticable, and to throw unlimited political authority into the hands of communities which may require, for their own good and the good of the country, the strong restraining hand of a "superior." Train the people of every Territory, as fast as you practicably can, in the business of self-government; but do not begin with ignoring your duty to deal out political power just as fast as they can safely be intrusted with it, and no faster, merely because you desire to contrive a short-hand method of disposing of the "slavery question," or to avoid the responsibilities which that question involves. If you believe that the Constitution, *proprio vigore*, carries slavery into the Territories, march up to the point, and say so. If you believe that it does not, but that legislation is necessary to plant slavery there,

vote *yes* or *no* when such legislation is proposed. If you think it inexpedient to have the question decided while the Territorial condition continues, place that question in abeyance by suitable provisions. If you wish to leave it to the people of a particular Territory to decide it for themselves before they acquire the right of self-government by becoming a sovereign State, confer on them the necessary power. But take care how you emasculate the Constitution by a doctrine which will return to plague your invention in a hundred ways, and will render the full and free administration of the Federal Government impracticable, by making the sovereignties of the States and the sovereignties of the Territories one and the same.

The sovereignties of the "States" are founded in something more than an *abstract right* of self-government. We are not to forget that they are older than the Federal Constitution; that the Federal system itself is the embodiment of certain portions of sovereign power which the States originally held, but which they found it convenient and necessary to part with, and to vest in a central authority, for their common good; and that if, for the same great object of the common good, they deemed it necessary to convey to that central authority their several claims to unoccupied territory, or their several rights to acquire territory outside of their respective limits, it is not a very probable supposition that they intended to convey their political jurisdiction over such regions to any power but that which they had instituted as their common agent for the accomplishment of the objects which they had in view. They held, without doubt, most tenaciously to their right of popular sovereignty; that is, the right of self-government. But this right, as embodied in the idea of State sovereignty, is founded, likewise, in the proud consciousness of capacity for its exercise. That lofty State independence, which feels an encroachment like a wound, is the result of conscious fitness for the condition which it jealously guards, and which use has made normal. How strange it seems, that political societies, which have thus blended together in their own existence the ideas of an abstract right and a capacity of self-government, should be supposed to lay the former only at the foundation of new communities, and to treat the latter as of no account in the formation of a system for the creation of new members of their general confederacy! Again and again has each generation, since the Federal Constitution was esta-

blished, witnessed the settlement of Territories, whose inhabitants, in the earlier stages of their career, have been practically incapable of holding and fulfilling the trusts of a full self-government. How can it be otherwise in sparsely settled regions, where the people have not been accustomed to act together; where they come from communities of differing political ideas; where some have had no civil training at all, where others are entirely lawless, while a few are perhaps skilled in all the arts of political management; where no homogeneous popular character has been formed; and where there are as yet none of the institutions which brace society together, and none of the settled habits of order which precedents supply? When we consider what legislation sometimes results from general suffrage, even in our oldest States, we cannot see in the doctrine of popular sovereignty in the Territories, with all that is claimed for it by one of the wings of modern democracy, any thing that should cause us to embrace it for its wisdom and expediency, any more than for its conformity to sound constitutional principle.

We have said that the sovereignties of the States are founded in something more than an abstract or natural right. Let us now add to the illustrations which we have already suggested upon this point the further fact, that the very idea of State sovereignty involves the existence of some system of fundamental law, which we call a constitution. No one can conceive of a State, a sovereign member of this Union, without some restraints of fundamental law, — self-imposed, it is true, and resting upon the popular will, but defining the limits of legislative power, operating to protect the minority against the majority, the weak against the strong, and preventing the government from being the mere despotism of an irresponsible mob. It is the presence of these restraints on popular power — voluntarily assumed, but at the same time solemnly incorporated into public compacts — which makes a democracy a republic, and secures the individual against injustice and oppression. Without this high achievement in political science, the sovereignty of a State would be destitute of its noblest attribute. This is the diadem which popular sovereignty places upon its own brow; and, if it were lost, all would indeed be lost with it.

But how can these restraints, or any fundamental law whatever, save the act of Congress which organizes it, exist in a Territory?

There, no local constitution throws its shield over private or public rights. There, if we accept the theory of "popular sovereignty" which we are invited to embrace, there can be no restraints upon the absolute will of the majority; and legislation may be, as we have seen it in Kansas, violent, proscriptive, and tyrannical, disgraceful to the age, and shocking to the common sense of mankind, without the least remedy on earth for the individual, because there is no test of established principle, in the nature of a Bill of Rights, to which such legislation can be brought. In a Territory, there is absolutely nothing that can answer to the place of a Bill of Rights for individuals; and there is nothing that can fill this place, for the Territories, except the large superintending discretion of Congress, — the public conscience of the nation, — which can watch the Territorial legislation, and can restrain it where it ought to be restrained.

If we look to the practical benefits which are expected from this new doctrine of "popular sovereignty," in reference to "the slavery question," we see still less to hope from it. The grand recommendation with which it is presented to us is, that it will prevent agitation of the slavery question in Congress. In the session of 1853–4, Mr. Douglas carried his point. He procured the repeal of the Missouri Compromise, and obtained a Congressional declaration, that the Federal authority would neither put slavery into or put it out of Kansas, but that the people of that Territory should be perfectly free to decide this question for themselves. We were told that this legislation was to put the slavery question and all agitation of it out of Congress, and that universal peace was to reign. We may give all credit to Mr. Douglas for patriotic motives; but how has his experiment succeeded? For five years, we believe, there has not been a session of Congress during which this subject has not been discussed. It could not have been otherwise. The direct consequence of throwing this matter into Kansas, to be acted upon there in the legislative body, in the attempts to make constitutions, in the struggles of parties, reenforced as they were by outside intermeddlers, was, that an almost countless series of questions was thrown back into Congress, invoking and precipitating constant agitation of the subject of slavery. "Topeca" and "Lecompton," of necessity, claimed the intervention which the organic act had vainly undertaken to forestall and prevent.

It is not extravagant to say, that there has been more and worse agitation of "the slavery question" in Congress, in the last five years, in consequence of this effort to put the subject out of Congress, than could have taken place if the National Legislature had proceeded, after having made a clean field by removing the Missouri restriction, to consider anew, on grounds of expediency, whether slavery should or should not be directly introduced and legalized in that unhappy Territory.

If we turn to the state of things that has existed in Kansas itself, we cannot fail to see the utter futility of the hope that the Federal Government would be relieved from embarrassment by remitting the decision respecting slavery to the supreme arbitrament of "popular sovereignty." The Federal Executive was forced to remove governor after governor, and secretary after secretary, because "the policy of the administration," in respect to the principles of the organic act and its requirements, was supposed to be misunderstood or misinterpreted by those local functionaries. The Territory was torn by factions, whose struggles created a civil confusion amounting nearly or quite to civil war, in which the intervention of the National Government became absolutely unavoidable. This intervention carried with it, naturally, inevitably, some further display of "the policy of the administration." That policy was supposed, rightfully or wrongfully, to have a leaning on the subject of slavery. The acts of the Executive and its supposed policy could not escape examination in Congress; and the whole circumstances of the case led to discussions, which opened again and again the widest door for the introduction of bitter sectional controversy.

As it has been, so it will be again if a similar course is again pursued. The expedient of "popular sovereignty" will be of no more efficacy in keeping the subject of slavery out of Congress hereafter than it has been heretofore. If all branches of the Government and a majority of the people of the whole country were to acquiesce in the doctrine that Congress cannot rightfully legislate directly on the subject of slavery in the Territories, it would still be in the power of Congress to exert an indirect influence; that influence would be invoked; and the invoking of it would produce agitation, as extensive, as fierce, and as dangerous as any discussion of a proslavery or an antislavery bill. For if we suppose the case of a Territory whose

inhabitants, proceeding to decide this question for themselves, had evidently determined to decide it against the wishes of a majority, or even of a strong minority, of the States, as represented in Congress, it would be impossible for them to deal with it in such a way as to remove it out of the indirect reach of that majority or minority. The opportunities for throwing impediments in their way, without direct violation of their "sovereignty," would be endless; and those opportunities would produce Congressional agitation. Kansas, with all the boasted non-intervention of its organic act, has proved this to demonstration.

Another of the practical benefits which Mr. Douglas seems to promise himself will flow from the doctrine of "popular sovereignty" is that it will furnish an answer to the extreme Southern pretension, that slavery goes into a Territory by force of the Constitution of the United States, and that the people of the Territory cannot legislate to keep it out. He denies that this pretension has received any sanction from the opinions expressed by the majority of the Judges in the Dred Scott case; and he maintains, that, while those opinions sustain his denial of the power of Congress to legislate directly against the introduction of slavery into a Territory, they do not negative the power of the people of the Territory to exclude it by their own action. We differ entirely from Mr. Douglas in respect to this point; and will now proceed to show why the views expressed in the case of Dred Scott are entirely irreconcilable with his doctrine of "popular sovereignty."

It is difficult to speak of the case of Dred Scott with proper precision. To call it a *decision*, without a great deal of discrimination, is quite incorrect. The *conclusion* arrived at by a majority of the Court was, that the plaintiff could not maintain his action. But most lawyers, who have examined the case critically, are aware, that in consequence of the peculiar state of the record, as it came before the Supreme Court, the views expressed by the several Judges (who united in the above-mentioned *conclusion*), respecting the legislative power of Congress over the Territories, do not constitute a *judicial decision*, so as to overrule the series of former cases, which had affirmed that Congress possesses a municipal authority over the Territories by virtue of what has been called the Territorial clause of the Constitution * (Art. iv.

* See the note on the Dred Scott case, in the APPENDIX, A.

sect. 3). At the same time, it is undoubtedly true, that a majority of the Judges did give their personal sanction to two propositions: *first*, that Congress derives no municipal authority over the Territories from the Territorial clause; and, *secondly*, that, whatever its authority may be, slave *property* cannot be excluded by *Congress* from any place where Congress has jurisdiction. Now, in order to see whether the same Judges did not equally maintain that the Territorial legislature is also destitute of power to exclude slave *property*, we have only to look at the opinion of the Chief-Justice, which was written and read as the opinion of a majority of the Court. From that opinion, we maintain that Mr. Douglas can derive no support for the power of a Territorial legislature to exclude slavery; but that, on the contrary, the opinion negatives the power of both Territory and Congress.

The Chief-Justice maintains, that while Congress may have an implied power to regulate the political organization of a Territory, in order to prepare it for admission as a State, yet that Congress has no power of legislation which can reach a subject to which the Constitution has extended its protection, which it has placed under certain guaranties, and which is, therefore, as fully excluded from the control of Congress as if it were named in an express prohibition. In order to establish the last of these conclusions, the venerable Chief-Justice refers to the express prohibitions which the Constitution has imposed as restrictions upon the powers of Congress, — such as the prohibition against making laws respecting an establishment of religion; the quartering of soldiers in time of peace; the depriving any person of life, liberty, or property, without due process of law, &c., — and he shows conclusively, that neither in a Territory nor in a State can Congress exercise any power over the person or property of a citizen, beyond what the Constitution confers, or lawfully deny any right which it has reserved. This position, which is taken with great strength, and which no Constitutional lawyer will contest, is thus summed up by the Chief-Justice: —

"The powers over person and property of which we speak are not only not granted to Congress, but are in express terms denied; and they are [it is] forbidden to exercise them. And the prohibition is not confined to the States; but the words are general, and extend to the whole Territory over which the Constitution gives it [Congress] power to legislate, including those

portions of it remaining under Territorial government, as well as that covered by States. It is a total absence of power everywhere within the dominion of the United States, and places the citizens of a Territory, so far as these rights are concerned, on the same footing with citizens of the States, and guards them as firmly and plainly against any inroads which the General Government might attempt under the plea of implied or incidental powers. And, if Congress itself cannot do this, — if it is beyond the powers conferred on the Federal Government, — it will be admitted, we presume, that it could not authorize a Territorial government to exercise them. It could confer no power on any local government, established by its authority, to violate the provisions of the Constitution." *

From this, it is sufficiently apparent that the Chief-Justice meant to lay it down as a proposition which admitted of no denial or exception, that where there is a right secured or guaranteed by the Constitution, or a prohibition imposed on the legislative power of Congress which that body is forbidden to violate by its own action, the Territorial legislature is equally forbidden; because Congress cannot authorize any body to do that which it is itself prohibited from doing. Now, the mode in which the Chief-Justice places slavery within this undeniable principle is this, — that although the Constitution contains no express prohibition against the passing of laws respecting slavery, yet that it manifestly withholds the power to decide what is or is not to be regarded as property; that it not only withholds this power, but that it recognizes the right of property of the master in a slave, and recognizes no distinction between that and all other property; that, this right of the master being thus recognized by the Constitution as a right of property, no tribunal, acting under the authority of the United States, can take away that property without due process of law; and that a legislative act forbidding a citizen to bring his property into a particular Territory would deprive him of it "without due process of law." — "And if the Constitution," says the Chief-Justice, "recognizes the right of property of the master in a slave, and makes no distinction between that description of property and other property owned by a citizen, no tribunal acting under the authority of the United States — whether it be legislative, executive, or judicial — has a right to draw such a distinction, or deny to it the benefit of the provisions and guaranties

* Opinion of Mr. Chief-Justice Taney in the case of Dred Scott, 19 Howard, 450.

which have been provided for the protection of private property against the encroachments of the government."

Hence it is quite plain, that when Mr. Douglas reads the opinion of the Chief-Justice as if, in speaking of those things which neither Congress nor its creature the Territory can do, he intended to embrace only the express prohibitions of the Constitution, and *therefore* did not mean to exclude "the slavery question" from the legislative power of a Territory, he does not appreciate the Chief-Justice's argument: for it is clear, from the whole tenor of that argument, that it meant to bring slave property, as property, within the protection of the Constitution, and to deny that there is any authority in any legislative body, organized under the Constitution, to exclude it from any place where such body has jurisdiction; because such exclusion would be a depriving the citizen of his property "without due process of law;" which cannot be done, either by the Territory or by Congress.

We are not at present concerned with what we believe to be the true answer to this argument; but we wish to impress upon our readers, that every thing depends upon the truth and extent of the two postulates, —*first*, that the Constitution recognizes, and means to protect, slaves as property; and, *secondly*, that to legislate for its exclusion from a particular place, which is under the jurisdiction of Congress, violates that provision of the Constitution which declares that "no person shall be deprived of life, liberty, or property, without due process of law."

If these positions are well taken, the conclusion is inevitable, that neither Congress nor the Territorial legislature can prevent the introduction of such property into any Territory of the United States.

We may well ask, then, of what avail is "popular sovereignty" to be against this doctrine? Mr. Douglas himself allows, that the sovereignty of the people of a Territory is subject to the restraints imposed by the Constitution of the United States. Indeed, it would be impossible for him to construct his theory upon any other basis; for whether the sovereignties of the Territories are or are not to be regarded as subjected to the same restraints which are imposed upon the sovereignties of the States, it is certain that the legislative power of a Territory,

which is called into existence by the action of Congress, can have no greater latitude than the Constitution allows to the power of Congress itself. "Popular sovereignty," therefore, can furnish no answer to the doctrine which a majority of the Judges of the Supreme Court unquestionably did sanction in the case of Dred Scott, although the technical posture of the record in that case was not such as to give their affirmance of this doctrine the force of a judicial precedent. That doctrine can only be met by asserting the general legislative authority of Congress over the Territories, and by showing that this authority is not restrained in respect to slavery in the mode contended for by the Chief-Justice.

This last position is to be established by showing that the Constitution simply recognizes the fact, that in certain of the States there are persons who, by the local laws of those States, owe service to certain other persons; that this relation, founded in the local law, is recognized beyond the dominion of that law, only in the exceptional case of an escape into a State to whose local law it is unknown; and that, as it is competent to a State to make the law of personal relations within its own limits (subject to the exception of an escape), it is in the same way competent to Congress to make that law where Congress has exclusive jurisdiction; namely, in the Territories.*

No one can have observed attentively the signs of the times, without perceiving the influence which the doctrine of "popular sovereignty" has had, and is yet likely to have, in promoting the extreme Southern claim for an active interference by Congress to protect slave property in the Territories. In this respect, we look upon this doctrine as one of the worst among the various provocatives of sectional agitation. There are many politicians, and other persons who are not politicians, in the South, who feel strongly on the subject of their general claim to emigrate into regions which confessedly belong to the people of the whole Union, and to carry with them that form of labor to which they are accustomed. They know that Congress is the administrator of the public domains of the Union, in trust for the common good; and, in a pending case, they would feel the necessity, and at the same time the equity, of an appeal to Congress to give them that protection without

* See the note on the property doctrine, in the APPENDIX, B.

which their abstract claim of right would be of no value. But the doctrine of "popular sovereignty" turns them away from the doors of Congress, — the legitimate umpire with respect to their claim to share in the common domain, — and sends them to a tribunal where they may not be represented, and where, if they are represented, the decision may be nothing but the result of a social scramble. Who can wonder, then, that they are driven by this new dogma into the maintenance of a theory that will override it? — the theory that the Constitution itself protects slaves as property, and that, where the jurisdiction of Congress exists, it is bound to legislate for the protection of that which the Constitution sanctions and recognizes. You propose to deny them a hearing in Congress, and to send them before the people of a Territory for a decision of a purely equitable claim, which addresses itself to the national justice. If you thus ignore your duty to decide, how can you expect that they will not convert their equitable claim into a claim of positive right, and thus circumvent you if they can?

We have no faith in any of the expedients for quieting sectional controversy which involve a negation of the proper duty of Congress. All such expedients have a necessary tendency to multiply the occasions and causes of strife. If either section of the Union were to be outvoted in Congress on the direct question of slavery in a Territory, the mischiefs to be apprehended from the result would bear no comparison with such a state of things as that which followed the reference of this question to the people of Kansas.

Having thus endeavored to show that "popular sovereignty" is likely to be attended with no practical advantages, we beg leave to ask of our Democratic friends, why they cannot cease to agitate about the means of putting an end to agitation. If any voice of ours could reach them, we would respectfully but firmly inquire of the great Democratic party of this country, what they expect to gain by the establishment of this theory of popular sovereignty in the Territories, if they shall adopt it, and shall succeed in carrying a popular election by it, as the means of disposing of "the slavery question." Whether rightfully or wrongfully maintained, when a Presidential election is carried upon a Constitutional doctrine, that doctrine becomes, in the practical administration of the government, a settled construction, — at

least, for the party which adopts it, — however ill adapted the popular tribunal may be for the correct decision of such a question. The Democratic party, therefore, if it succeeds upon this doctrine, will consistently adhere to it. It will administer the government, in respect to the affairs of all Territories, upon the principle laid down by Mr. Douglas; namely, that Congress has no power to interfere in respect to their local or municipal affairs. It will organize all Territories, hereafter, not simply with a concession of "popular sovereignty" on this particular matter of slavery, but without any reservation to Congress of the least control over the Territorial legislation on any domestic subject whatever. Let the mischiefs of that legislation be what they may, the Democratic party must reap as it shall have sown, and can only profess the inability of the Federal power to afford either preventive or cure.

Are our Democratic countrymen prepared for this surrender of the authority of Congress? If they would fall back, in respect to the mere "slavery question," upon the doctrine of a majority of the Judges in the Dred Scott case, and would say that the legislative authority of Congress is restrained, because the *property* character of slavery brings it within one of the positive prohibitions which the Constitution has laid upon all the powers of Congress, their course would be intelligible, unsound as we might be disposed to regard it. But they are urged to go much beyond this: they are counselled to abrogate the entire legislative and superintending jurisdiction of Congress over the Territories, without looking to see whether a case of special prohibition is or is not made out. For ourselves, we do not mean to consent to this abdication in favor of the people of any Territory, on the slavery or any other question, however willing we might be to *confer* on them the faculty of self-government in suitable cases.

To show that we have not overstated the consequences of a general denial of the municipal authority of Congress over the Territories, we desire to vouch the testimony of Mr. Justice Catron, — a man of great fearlessness, a citizen of a slaveholding State, and, in his early days, a political disciple of Andrew Jackson; whose life and actions certainly tended to any thing rather than to a diminution of the Federal powers.

In considering the various grounds on which the Court had been

urged, in the Dred Scott case, to decide that Congress could not legislate to exclude slavery from a Territory, Judge Catron was evidently struck with the consequences of that sweeping denial of the general authority of Congress over Territories, which is embraced in the political phrase "popular sovereignty." He knew, that, in regions beyond the Mississippi, his official duty had, for nearly twenty years, called upon him to perform judicial acts whose validity rested on the lawful supremacy of Congress over the Territories and their inhabitants; and that, sitting on the Supreme Bench at Washington, he had united with his brethren in declaring that that supremacy rests upon the power "to make all needful rules and regulations" for such Territories. When, therefore, he came to announce his concurrence with those of his brethren who held the Missouri-Compromise restriction void, he used the following significant language; which we commend to all advocates of the doctrine of "popular sovereignty," as it is expounded by Mr. Douglas: —

"It was hardly possible [in framing the Constitution] to separate the power 'to make all needful rules and regulations' respecting the government of the Territory, and the disposition of the public lands. . . . It is due to myself to say, that it is asking much of a Judge who has, for nearly twenty years, been exercising jurisdiction from the western Missouri line to the Rocky Mountains, and, on this understanding of the Constitution, inflicting the extreme penalty of death for crimes committed where the direct legislation of Congress was the only rule, to agree that he had been, all the while, acting in mistake and as an usurper.

"More than sixty years have passed away since Congress has exercised power to govern the Territories by its legislation directly, or by Territorial charters subject to repeal at all times; and it is now too late to call that power into question, if this Court could disregard its own decisions; which it cannot do, as I think. It was held, in the case of Cross *vs.* Harrison (16 Howard, 193–4), that the sovereignty of California was in the United States in virtue of the Constitution, by which power had been given to Congress to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States, with the power to admit new States into the Union. That decision followed preceding ones there cited. The question was then presented, how it was possible for the judicial mind to conceive that the United-States Government, created solely by the Constitution, could, by a lawful treaty, acquire territory over which the acquiring power had no jurisdiction to hold and govern it, by

force of the instrument under whose authority the country was acquired; and the foregoing was the conclusion of this Court on the proposition. What was there announced was most deliberately done, and with a purpose. *The only question here is, as I think, how far the power of Congress is limited.*" *

In conclusion, we have only to say, that it has for some years excited our special wonder to observe how politicians and parties, and even the people of the United States, go on in reference to this relation of the Federal Government to the Territories, apparently without thinking of that portentous cloud which hangs upon our Western horizon, — the Territory of Utah. The country is actually about to be precipitated into a Presidential election, in which the sweeping doctrine is to be proclaimed, — perhaps to be sanctioned, — that the Federal power can exercise no interference whatever with the local and municipal concerns of the inhabitants of any of its Territories; while, at this very day, a problem is before us at which statesmen may stand aghast, and which may call for all the Constitutional power that our fathers devised, and for all the physical resources that the country can spare, to enforce its supremacy.

With respect to the topic of slavery, as involved in the exercise of the jurisdiction which we contend rightfully belongs to Congress in all the Territories, we desire to say, that we advocate and earnestly pray for a return, if such a return be possible, to the policy of those who founded the Federal Government, and who administered it with the knowledge which, as its founders, they must have possessed. That policy was as far removed from all previous or abstract popular agitation of this question as it was eminently liberal, wise, and practical. Our fathers waited until they had a Territory to organize and a Territorial government to provide. When this practical duty was before them, they inquired who were the present, or who were likely to be the future, settlers; what would subserve the interests, or be in accordance with the wishes, of those settlers; and, if the circumstances by which the case was surrounded seemed to require it, they sought for such a compromise of the merely sectional demands involved in it as justice, fairness, and comity would dictate. In this way, while they endeavored to guard the Southern

* Opinion of Mr. Justice Catron in the case of Dred Scott, 19 Howard, 522–3.

Territories (even before the year 1808) against the introduction of fresh slaves from Africa, they permitted Southern men to enter those Territories with the slaves which they already possessed. In this way, too, they succeeded, both before and after the Constitution, in impressing an unalterable condition of freedom upon the whole region northwest of the Ohio. They thus made Free States and Slave States, side by side, without sectional feuds, down to the time of the Missouri Compromise, which was the first occasion on which this question seriously threatened the harmony of the Union. How the dangers of that occasion were avoided, all of us understand.

Since that period, what has the history of the country demonstrated? It has shown, beyond the possibility of denial, that, whenever popular agitation begins in reference to what is called the *extension* of slavery, it inevitably runs into a chronic inflammation of the sectional passions, engendering extravagant doctrines and unreasonable demands, at both ends of the Union. In the South, such doctrines and demands take the shape of a revival of the slave-trade, and the scriptural warrant for slavery: in the North, a fierce and uncalled-for hostility to the special feature of Southern society becomes developed into plots and conspiracies for the liberation of those over whose condition we have neither a legal nor a moral right of jurisdiction, and in the execution of which not a single step can be taken without bloodshed. Now, unless we mean to go on in this way until we have created both a civil and a servile war for the gratification of a few madmen, we must consider what are our duties, and must proceed resolutely to discharge them.

One of the first of our duties, which is as much incumbent on the people of the South as it is on the people of the North, is to divest ourselves of the influence which an exaggerated sense of the importance of this Territorial-*slavery* question has exerted over our minds. It has been found, in both sections, to be an engine useful to the politician. This very capacity of the subject — its capacity to win votes for parties or individuals — should lead us to watch its treatment with the utmost jealousy, and to watch its influence over ourselves. If, in so doing, the people of either section would calmly consider what degree of practical importance belongs at any time to this question, apart from all other matters involved in the relation of the Federal Government to the

Territories, they would find that its chief value consists in its power of creating political excitement; or, in other words, in its power for mischief. This being the case, our next imperative duty is to make ourselves fully sensible of the fact, that neither of the political parties, which are responsible for the agitation of this question, has dealt with it wisely or properly. The Democratic party, for example, found this question, six years ago, in reference to all the territory then demanding organization, settled by a compromise which had stood on the statute-book for more than thirty years. They repealed that settlement; from what motive, we do not now inquire. They thus repudiated the policy of settling the character of particular Territories by Congressional compromise or arrangement; and, *so far as they could do it, rendered a resort to that ancient and peaceful method exceedingly difficult, if not impracticable, hereafter.* They thus entailed upon themselves the necessity of finding some rule, of a universal and permanent character, which would furnish a solution of the difficulty created by their abrogation of the old policy. In pursuit of this rule, they have been ever since —

"In wandering mazes lost."

Agreeing only in their repudiation of the power of *Congress* to *prohibit* slavery in a Territory, they present the spectacle of a great national party seeking in the most contradictory ways for an answer to the question, — which they never should have suffered to arise, — *What is the true condition of a Territory, when there is neither prohibition nor sanction of slavery by Congressional interference?*

We say this in no spirit of triumph or exultation; for we regard it as a national misfortune, when a political party, strong by its ramifications throughout the country, and renowned for its fidelity to the Union, paralyzes its own power of usefulness by such a course. It is difficult to conceive of a greater political error than the one that was thus committed by the Democratic party. It immediately gave rise to what ought to have been foreseen, — the pretension, on the part of their extreme Southern wing, that slavery goes into a Territory against the will of both Congress and the people of that Territory; while it compelled the Northern portion of the same party to look about for a doctrine on which they can exist in the Free States, and to find it in "popular

sovereignty," which overturns the supremacy of Congress on a vast many other subjects as well as on the subject of slavery.*

But this was not all, if it was even half, of the evil. A political party must have an antagonist in every free, constitutional government; and, although the Democracy succeeded in scattering their ancient opponents, another organization arose to be their adversaries. The denial by the Democratic party of the power of Congress to exclude slavery from a Territory, led the Republicans, of course, to embrace and defend that power; and, if the Republicans had contented themselves with the discharge of this obvious duty, they might have restored the Constitution to its true position, and have earned for themselves a title to be called benefactors of their country. This was their mission; and rarely has there been a higher one presented to any political organization. But, easy as it may be to trace their error, it is not so easy to excuse it. They should have made themselves the defenders of the supremacy of Congress over the Territories, and should have vindicated its *power* to deal with slavery therein, as with all other things, whether by compromise, or by naked legislation without compromise. But here they should have stopped.

Instead of this, they mingled with this great argument — which demanded Southern as well as Northern support, and to which the South should have been won by the power of reason and the persuasive gentleness of brotherly love — the untenable dogma, offensive at once to Southern pride, that the power is a power to prohibit, and includes no authority to establish or sanction, slavery. They declared, that, every-

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* As we write these paragraphs, we read in the "Chicago Times," a paper in the interest of Mr. Douglas, that, "from the day of Mr. Douglas's triumph in Congress over the administration in the affair of Lecompton, he has been denounced as a traitor, and every man has been proscribed who avowed sympathy or conviction with him. The masterly Essay on 'The Dividing Line between Local and Federal Authority' thus became necessary, as well to his own vindication *as for the rescue of the party from impending ruin.*"

An impartial spectator cannot fail to ask why it is that the Democratic party is exposed to "impending ruin;" and such a spectator cannot avoid seeing, that when a political party departs from established principles of the Constitution, seeking for new theories to take the place of plain Constitutional powers long recognized and acted upon, it must necessarily become divided against itself in the pursuit of such theories. Had the Missouri Compromise been left undisturbed, neither Mr. Douglas nor "the administration" would ever have had occasion to contend about "popular sovereignty in the Territories."

where and under all circumstances, the slaveholder shall be excluded from the national domains, if he goes with the servants whom he possesses at home. They sought to rouse the Free States, by a general antislavery agitation, to a combination for the enforcement of a policy, the declaration of which increased instead of diminishing the perils to which the Constitutional power was already exposed. These were acts of consummate imprudence. They were acts which gave the control of the Republican party to its least reliable members; made its fanatics leaders; and, of necessity, reduced it to the position of a purely sectional organization, to be feared and abhorred throughout one-half of the Union. Over this error, too, we have no feeling of gratification to indulge. It is mournful to see a noble cause frustrated by those to whose hands fortune has committed its defence. It is mournful to see a great Constitutional power which was lodged by our fathers in their frame of government, for wise and beneficent purposes, and which can alone furnish a safe means of disposing of questions which imperil our peace, thus put still further from its office by the indiscretion of those who ought to have gained for it the glad acquiescence of the whole land, by making the South to feel that her interest in its maintenance is even greater than the interest of the North.

APPENDIX.

A.

Note on the Dred Scott Case, referred to ante, p. 25.

THE decision of the Supreme Court of the United States in the Dred Scott case is so little understood, and its character as a judicial precedent is so generally misapprehended and so often misrepresented, that the following analysis of it may be useful.

The plaintiff, Dred Scott, brought an action of trespass in the Circuit Court of the United States for the District of Missouri, against the defendant, Sandford, for the purpose of establishing his freedom; and according to the requirements of law, in order to gain the jurisdiction of the Court, the plaintiff, in his writ, averred himself to be a "citizen" of the State of Missouri, and the defendant to be a "citizen" of the State of New York. The defendant filed a plea in abatement, alleging that the plaintiff is not a "citizen" of Missouri, because he is a negro of African descent, his ancestors having been of pure African blood, brought into this country and sold as slaves. To this plea the plaintiff demurred; and, as by his demurrer he admitted the *facts* alleged in the plea, the sole question on the demurrer was the question of law, whether a negro of African descent, whose *ancestors* were slaves, can be a citizen of the United States, for the purpose of suing a citizen of another State than his own in a Circuit Court. The Circuit Court gave judgment for the plaintiff on this question; and the defendant was ordered to plead to the merits of the action. He did so; and the substance of his plea in bar of the action was, that the plaintiff was his (the defendant's) slave, and that he had a right to restrain him as such. Upon the issue joined upon this allegation, the case went to trial upon the merits, under an agreed statement of facts, which ascertained, in substance, that the plaintiff, who was a slave in Missouri in 1834, was carried by his then master into the State of Illinois, and afterwards into that part of the Louisiana Territory in which slavery had been prohibited by the act of Congress called the Missouri Compromise, and was afterwards brought back to Missouri, and held and sold as a slave. The jury, under the instructions of the Court, found that the plaintiff, at the time of bringing his action, was a slave; and the defendant obtained judgment. The plaintiff

then sued out a writ of error to the Supreme Court of the United States, which removed the whole record into that Court.

It will be observed that the record, as brought into the Supreme Court, presented two questions: —

1. The question arising on the plea to the jurisdiction of the Circuit Court, whether a negro of African descent, whose *ancestors* were *slaves*, can be a *citizen*.

2. The question involved in the verdict and judgment on the merits, whether the *plaintiff* was a *slave* at the time he brought his action. This question involved, among others, the inquiry whether the Missouri Compromise, which prohibited the existence of slavery in the Territory where the plaintiff was carried, was constitutional or not.

The importance and effect of the *Dred Scott decision* depend entirely upon the manner in which these questions were dealt with by the Supreme Court. If either of them was *judicially* decided by a majority of the Bench in the same way, the decision constitutes a judicial precedent, binding upon the Court hereafter, and upon all other persons and tribunals, until it is reversed in the same Court, to just the extent that such decision goes. If either of them was not judicially decided by a majority of the Bench in the same way, there is no precedent and no decision on the subject; and the case embraces only certain individual opinions of the judges. The following analysis will determine what has been judicially decided. The reader will observe, that, when the *plea in abatement* is spoken of, it means that part of the pleadings which raised the question whether a negro can be a citizen: the *merits of the action* comprehend the question whether the plaintiff was a *slave*, as affected by the operation of the Missouri Compromise, or otherwise. Keeping these points in view, every reader of the case should endeavor to ascertain the true answers to the following questions: —

I. How many of the judges, and which of them, held that the plea in abatement was rightfully before the Court, on the writ of error, so that they must pass upon the question whether a negro can be a citizen?

Answer. — Four: Chief-Justice, and Justices Wayne, Daniel, and Curtis.

II. Of the above four, how many expressed the opinion that a negro can *not* be a citizen?

Answer. — Three: Chief-Justice, and Justices Wayne and Daniel.

Judge Curtis, who agreed that the plea in abatement was rightfully before the Court, held that a negro *may* be a citizen, and that the Circuit Court, therefore, rightfully had jurisdiction of the case.

The opinions of these four judges on this question are to be regarded as *judicial;* they having held that the record authorized and required its decision. But as there are only three of them on one side of the question, and there is one on the other, and there were five other judges on the bench, there is no judicial majority upon this question, unless two at least of the other five concurred in the opinion that the question arising on the plea in

abatement was to be decided by the Supreme Court, and *also* took the same view of that question with Judges Taney, Wayne, and Daniel.

But, in truth, there is not one of the other five judges who concurred with the Chief-Justice and Judges Wayne and Daniel on either of the above points.

Judge Nelson expressly avoided giving any opinion upon them. Indeed, he seems to have leaned to the opinion, that the plea in abatement was not before him: but, after saying there may be some question on this point in the Courts of the United States, he goes on to say, "In the view we [I] have taken of this case, it will not be necessary to pass upon this question; and we [I] shall therefore proceed at once to an examination of *the case upon its merits.*" He then proceeds to decide the case upon the merits, upon the ground, that, even if Scott was carried into a region where slavery did not exist, his return to Missouri, under the decisions of that State, is to be regarded as restoring the condition of servitude. Judge Nelson has never given the opinion that a negro cannot be a citizen, or that the Missouri Compromise was unconstitutional, or given the least countenance to either of these positions.

Judge Grier, after saying that he concurred with Judge Nelson on the question embraced by his opinion, also said that he concurred with the Chief-Justice that the Missouri-Compromise Act was unconstitutional. He neither expressed the opinion that a negro cannot be a citizen, nor did he intimate that he concurred in that part of the opinion of the Chief-Justice: on the contrary, he placed his concurrence in the *disposal of the case*, as ordered by the Court, expressly upon the ground that the plaintiff was a *slave*, as alleged in the pleas in bar.

Judge Campbell took great pains to avoid expressing the opinion that a free negro cannot be a citizen, and has given no countenance whatever to that dogma. He said, at the commencement of his opinion, after reciting the pleadings, "My opinion in this case is not affected by the plea to the jurisdiction, *and I shall not discuss the question it suggests.*" Accordingly, in an elaborate opinion of more than twenty-five pages 8vo, he confines himself exclusively to the question, whether the plaintiff was a *slave;* and he adopts or concurs in none of the reasoning of the Chief-Justice, except so far as it bears upon the evidence which shows that the plaintiff was in that condition when he brought his suit. He concurred with the rest of the Court in nothing but the *judgment;* which was, that the case should be dismissed from the Court below for want of jurisdiction; and that want of jurisdiction, he takes good care to show, depends, in his view, on the fact that the plaintiff was a *slave*, and not on the fact that he was a free negro, of African descent, whose *ancestors* were slaves.

Thus there were only three of the judges who declared that a free negro, of African descent, whose ancestors were slaves, cannot be a "citizen," for the purpose of suing in the Courts of the United States, and whose opinions

on this point are to be regarded as *judicial*, because they were given under the accompanying opinion, that the question was brought before them on the record. As *three* is not a majority of *nine*, the case of Dred Scott does not furnish a judicial precedent or judicial decision on this question.

With regard to the other question in the case, — that arising on what has been called the merits, — the reader will seek an answer to the following questions: —

I. Of the judges who held that the plea in abatement was rightly before them, and that it showed a want of jurisdiction in the Circuit Court, how many went on, notwithstanding their declared opinion that the case ought to have been dismissed by the Circuit Court for that want of jurisdiction, to consider and pass upon the merits which involved the question of the constitutional validity of the Missouri Compromise?

Answer. — Three: Chief-Justice, and Judges Wayne and Daniel.

II. Of the above three judges, how many held the Missouri-Compromise Act unconstitutional?

Answer. — Three: the same number and the same judges.

III. Of the judges who did not hold that the question of jurisdiction was to be examined and passed upon, and gave no opinion upon it, how many expressed the opinion on the merits that the Compromise Act was void?

Answer. — Three: Judges Grier, Catron, and Campbell.

IV. Of the remaining three judges, how many gave no opinion upon either of the two great questions, — that of citizenship, or that of the validity of the Compromise?

Answer. — One: Judge Nelson.

V. Of the remaining two judges, how many, who held that the question of citizenship was not open, still expressed an opinion upon it in favor of the plaintiff, and *also* sustained the validity of the Compromise?

Answer. — One: Judge McLean.

VI. The remaining judge (Curtis) held that the question of citizenship was open upon the record; that the plaintiff, for all that appeared in the plea in abatement, was a citizen; and, consequently, that the Circuit Court had jurisdiction. This brought him necessarily and judicially to a decision of the merits, on which he held that the Compromise Act was valid.

Thus it appears that six of the nine judges expressed the opinion that the Compromise Act was unconstitutional. But, in order to determine whether this concurrence of six in that opinion constitutes a judicial decision or precedent, it is necessary to see how the majority is formed. Three of these judges, as we have seen, held that the Circuit Court had no jurisdiction of the case, and ought to have dismissed it, because the plea in abatement showed that the plaintiff was not a citizen; and yet, when the Circuit Court had erroneously decided this question in favor of the plaintiff, and had ordered the defendant to plead to the merits, and, after such plea, judgment on the merits had been given against the plaintiff, and he had brought the record

into the Supreme Court, these three judges appear to have held that they could not only decide *judicially* that the Circuit Court was entirely without jurisdiction in the case, but could also give a *judicial* decision on the merits. This presents a very grave question, which goes to the foundation of this case as a precedent or authoritative decision on the constitutional validity of the Missouri-Compromise Act, or any similar law.

If it be true, that a majority of the Judges of the Supreme Court can render a judgment ordering a case to be remanded to a Circuit Court, and there to be dismissed for a want of jurisdiction, which three of that majority declare was apparent on a plea in abatement, and these three can yet go on in the same breath to decide a question involved in a subsequent plea to the merits, then this case of Dred Scott is a judicial precedent against the validity of the Missouri Compromise. But if, on the other hand, the judicial function of each judge who held that the Circuit Court was without jurisdiction, for reasons appearing in a plea to the jurisdiction, was discharged as soon as he had announced that conclusion, and given his voice for a dismissal of the case on that ground, then all that he said on the question involved in the merits was extra-judicial, and the so-called "decision" is no precedent. Whenever, therefore, this case of Dred Scott is cited hereafter in the Supreme Court as a judicial decision of the point that Congress cannot prohibit slavery in a Territory, the first thing that the Court will have to do will be to consider and decide the serious question, whether they have made, or could make, a judicial decision that is to be treated as a precedent, by declaring opinions on a question involved in the merits of a judgment, after they had declared that the Court which gave the judgment had no jurisdiction in the case.

When it is claimed, therefore, in grave State-papers or elsewhere, whether in high or low places, that the Supreme Court of the United States, or a majority of its judges, has authoritatively decided that Congress cannot prohibit slavery in a Territory, it is forgotten or overlooked, that one thing more remains to be debated and determined; namely, whether the opinions that have been promulgated from that Bench adverse to the power of Congress do, in truth and in law, constitute, under the circumstances of this record, an actual, authoritative, judicial decision.

These observations respecting the Dred Scott case are submitted to the public, and especially to the legal profession, with the most entire respect for the several judges; with every one of whom, the writer believes he may say, he has the honor to sustain friendly relations, as he certainly reverences their exalted functions. In perfect consistency with these sentiments, he may be permitted to say, that whatever may be thought of the expediency of expressing opinions on every question brought up by a record, or argued at the bar, there must always be a subsequent inquiry how far such opinions, in the technical posture of the case, as it was presented and disposed of, make a *judicial decision.*

B.

Note on the Property View of Slavery, under the Constitution of the United States.

It is difficult to appreciate the importance which some Southern men appear to attach to the doctrine, that the Constitution of the United States recognizes slaves as *property*. It is a doctrine which cannot increase, by one jot or tittle, the security of the master's right. That right depends exclusively upon the law of the State, and is no more capable of being affected by the Federal Government, when the Federal Constitution is not held to recognize it as a right of property, than it is when the property doctrine is admitted. In point of truth, the Federal Constitution takes notice of the existence of the *status* of slavery in three modes only. *First*, it secures to the federal authority, through the commercial power, the right to prevent the increase of persons in the condition of servitude by *importation;* and there, in this direction, it stops, leaving it entirely to each State to permit their increase by birth upon the soil of the State. *Secondly*, the Constitution recognizes the fact, that besides the "free persons, including those bound to service for a term of years, and excluding Indians not taxed," there may be in the States "other persons;" it permits each State, in making the basis of its Congressional representation, to add to its free population three-fifths of these "other persons;" and, as it is perfectly well known historically that this provision had reference to persons in the condition of servitude, it is quite legitimate to say that the Constitution, through this provision, recognizes such servitude as an existing *status* of persons under the local law. *Thirdly*, the Constitution requires that "persons owing service" in one State, and escaping into another, shall not be discharged of their service in consequence of any law of the State into which they may have escaped, but shall be delivered up.

Now, what is there, in all this, which looks like a recognition of the right of the master as a right of *property*, in the sense in which that term must be used by jurists? The Constitution neither defines, affects, nor deals with, the right itself. If it is the pleasure of the State to abolish it, those who were its subjects pass out of the scope of these provisions of the Federal Constitution. If the State chooses to continue its sanction of the condition of servitude, these provisions continue to operate: they continue to operate so long as there are persons who come within the description, whether the State treats them as persons or as property, or as both. Indeed, under the provision relating to fugitives from service, there is no pretence to say that the Constitution looks to any *property;* for its terms embrace apprentices as well as slaves.

It is of some consequence to the harmonious working of our complex system of government, that the exclusive and irresponsible control of each State over the personal condition of its inhabitants should not be felt to be capable of being affected by any theory respecting the mode in which the Federal Constitution recognizes the peculiarities of that condition. Of course, no Slave State can ever permit its sovereign control over its inhabitants to be put for a moment in peril; not only because its peace and safety require a jealous defence of its own prerogative, but because that prerogative affords the only means by which we can rationally hope for a gradual amelioration of the condition of the African race. It scarcely seems desirable, therefore, to weaken the just foundations of this most important right, by maintaining theories which are in no way necessary to its defence.

With regard to this property doctrine, as affording the means of securing to slaveholders an entrance into the Territories with their slaves, we are entirely unable to perceive its value. It will be conceded by every reflecting person, that, when the right so to enter the Territories is established, it is a mere abstraction; and that, unless some means of protecting and upholding the relation of master and slave are provided under the local law, the relation will practically cease to exist. It is equally apparent that such protection can only be obtained by legislation, either Congressional or Territorial. If we suppose the application for a slave code to be made to Congress, how is the case strengthened by the property doctrine? If the property carried into a Territory is of such a character as to require the protection of a peculiar code, it is of very little consequence whether we call it property before it arrives, or call it something else; for, until the code is furnished, the thing itself is of no value. Whether the necessary code shall or shall not be furnished, depends entirely upon the legislative discretion of Congress. As the appeal must be made to that discretion, it would seem to be far better to have the whole matter depend at once upon those large considerations of political expediency which should in the end govern it, rather than to undertake to control the legislative discretion by an artificial subtlety, which supposes a duty to do that which the legislative power cannot be compelled to do.

JUDGE DOUGLAS IN REPLY TO JUDGE BLACK.

In Harpers' Magazine for September I published an article on the dividing line between federal and local authority in the Territories of the United States. My sole object was to vindicate a principle to which I had been committed for many years—and in connexion with which I had recently been assailed with great bitterness and injustice—by a fair and impartial exposition of the subject, without assailing any person or placing any one in a false position. A few weeks afterwards an anonymous review of my article made its appearance—first in the Washington "Constitution," and subsequently in pamphlet form—under the following caption: "Observations on Senator Douglas' views of popular sovereignty, as expressed in Harpers' Magazine for September, 1859."

Instead of replying to the well-known propositions which I had so often announced and defended in the Senate and before the country, for the last ten years, *and which were embodied and expressed in Harpers' Magazine for September*, the reviewer deemed it consistent with fair-dealing to ignore my real views as expressed in the article to which he professed to reply, and attribute to me opinions which I had never entertained or expressed on any occasion. When the pamphlet containing this perversion of my opinions was first placed in my hands, I at once pointed out some of the most obvious and palpable of those misrepresentations, and denounced them in emphatic and indignant language, in a speech at Wooster, Ohio.

Here I was content to let the matter rest, and allow the public to form an impartial and unbiassed opinion upon the real positions which I had assumed in Harpers' Magazine, without any reply from me to the *legal* argument which the writer of the anonymous pamphlet had made in opposition to my *alleged* views upon a *political question.*

On the 6th of this month, however, the same newspaper contained an appendix to this pamphlet, in reply to so much of my speech at Wooster as pointed out and denounced the misrepresentations of my views as expressed in Harper, and announced Judge Black, the Attorney General of the United States, as the author of the pamphlet and appendix. Since the Attorney General of the United States has thus avowed the authorship of these assaults upon me, and flooded the country with them with the view, doubtless, of giving all aspirants, expectants, and incumbents of office to understand that he speaks "by authority" of those whose legal adviser he is, and that they are all expected to follow his example and join in the crusade, I have concluded to reply to so much of his "Observations" as are calculated to obscure my real position by persistingly attributing to me opinions which I have never expressed, nor for a moment entertained.

"FIGHTING THE JUDICIARY."

For instance, the first act of injustice which I pointed out at Wooster, and proved to be untrue by undeniable facts, was his representation of me as "fighting the judiciary;" commanding the democratic party to "assault the Supreme Court of the United States;" not treating the court with "decent respect;" and much more of the same tenor. All of which was calculated to convey to those who might not happen to know the contrary, the idea that, "in Harpers' Magazine for September, 1859," I had assaulted, traduced, and indecently treated the Supreme Court of the United States on account of their decision in the Dred Scott case! It was shown in

my speech at Wooster that all these representations were pure inventions; that I had not written nor spoken one word in Harper or elsewhere in disparagement of the court or its decisions; that every reference or allusion to the court and its decision was in respectful terms of unqualified approbation; that in several places in the Harper article I not only endorsed, but largely quoted from the Dred Scott decision in confirmation of my own views; that I had made more speeches in defence of the court in connexion with the Dred Scott case than any living man; that in the Illinois canvass last year, when assailed by the combined forces of the black republicans and the federal office holders, under the advice of my present assailants, I defended the court in more than one hundred speeches against their enemies and mine; and, in conclusion, I defied the writer of this pamphlet, and all others who are reckless enough to endorse its statements, to produce one word ever spoken or written by me disrespectful of the court or in condemnation of its decision! Well, Judge Black, for himself and as Attorney General for my confederated assailants, has replied to my Wooster speech in his appendix; and what has he said on this point? What reply has he made to my positive denial of the truth of his allegations, and my demand for the production of the proof? Does he repeat the charge and produce the evidence to sustain its truth; or does he retract the charge and apologize for the injustice he has done me? I had supposed that there was no alternative for a man of honor but to do the one or the other! Judge Black has done neither! Nor is his conduct less exceptionable in respect to his allegation that I advocate the confiscacation of private property by the territorial legislature, or that I have alternately affirmed and denied that the Territories are sovereign political communities or States, or that the Jeffersonian plan of government for the Territories, which I alleged to have been adopted, was in fact "rejected by Congress," or that I was attempting to establish a new school of politics by forcing new articles into the creed, and new tests of democratic faith, in violation of the Cincinnati platform.

It is to be regretted that all political discussions cannot be conducted upon those elevated principles of fairness and honor which require every gentleman to state his antagonist's position fairly and truly, and correct any mistake he may have committed inadvertently the moment it is pointed out to him.

That I am or ever have been in favor of the confiscation of private property by the action of a territorial legislature, or by any other power on earth, is simply untrue and absurd. Nor is there any foundation or excuse for the allegation that I have ever assigned as a reason for such confiscation that the Territories were sovereign political communities.

THE TERRITORIES, WITHOUT BEING SOVEREIGN COMMUNITIES, HAVE CERTAIN ATTRIBUTES OF SOVEREIGNTY.

I have never said or thought that our Territories were sovereign political communities, or even limited sovereignties like the States of the Union. Sovereign States have the right to make their own constitutions and establish their own governments, and alter and change the same at pleasure. I have never claimed these powers for the Territories, nor have I ever failed to resist such claim when set up by others, as was done by the friends of a State organization in New Mexico and Utah some years ago, and more recently by the supporters of the Topeka and Lecompton movements in Kansas, where they attempted to subvert the authority of the territorial governments established by Congress, without the consent of Congress.

While, therefore, I have always denied that the Territories were independent sovereign communities, it is true, however, that during the last ten years I have often said, and now repeat my firm conviction, that the people of

the Territories are entitled to all the rights, privileges, and immunities of self-government, in respect to their internal polity, subject only to the Constitution of the United States. The Attorney General is unable to comprehend how the people of a dependent colony or Territory, can have any "attribute of sovereignty about them"! Sometimes a child can be made to comprehend a proposition which he does not understand, by presenting to his mind an example which is familiar to him. The American colonies, prior to the revolution, presented thirteen examples precisely in point. The Attorney General must be presumed to have read the history of the colonies, and to be familiar with these examples. The fact cannot be successfully controverted, and ought to be admitted, that the colonies did claim, possess, and exercise legislative power in their respective provincial legislatures over all rightful subjects of legislation in respect to their domestic concerns and internal polity. They enacted laws for the protection of life, liberty, and property; and in pursuance of those laws, they deprived men of life, liberty, and property, when the same became forfeited by their crimes. They exercised these high attributes of sovereign power during the whole period of their colonial dependency; and were willing to remain dependent upon the crown and obedient to the supremacy of Parliament in all matters which affected the general welfare of the empire without interfering with the internal polity of the colonies. So with our Territories. They possess legislative power, which is only another form of expression for sovereign power, over all rightful subjects of legislation in respect to their internal polity, subject, of course, to the Constitution of the United States.

THE SOURCE OF THE POWER OF SELF-GOVERNMENT.

But the Attorney General does not perceive the analogy between the colonies and the Territories in this respect; nor does he recognize the propriety of tracing the principles of our government back through the revolution for the pupose of instituting an inquiry into the grounds upon which the colonies separated from the parent country, and the fundamental principles established by the revolution as the basis upon which our entire political system rests. Such an inquiry is deemed mischievous because it is calculated to disturb the repose of those who hold that the Territories "have no attribute of sovereignty about them;" that a "Territory has a superior in the United States government upon whose pleasure it is dependent for its very existence, in whom it lives and moves and has its being; who has made and can unmake it with a breath;" that it is only "a public corporation established by Congress to manage the local affairs of the inhabitants, like the government of a city established by a State Legislature;" and that "there is probably no city in the United States whose powers are not larger than those of a federal Territory!" The learned Attorney General, having convinced himself by the study of that "primer of political science," which he claims to have "mastered," and kindly commends to my perusal, that Congress possesses the same sovereign power over the people and governments of the Territories that a sovereign State has over the municipal corporations of all the cities within its limits, or that the British Parliament claimed over the American colonies when it asserted its right to bind them in all cases whatsoever, deprecates all inquiry into the foundation of this right, and especially into the mode in which the claim was met by the colonies when it was attempted to be enforced by George III and his royal cabinet.

The authority of the King's Attorney General, and the terror which his anathemas were calculated to inspire, when supported by the King and his cabinet, were not sufficient to stifle the inquiry in those days. So long as this right of local self-government was not wantonly outraged, and its actual

enjoyment practically obstructed by the action of the imperial government, the colonies were content with the possession and enjoyment of this sovereign power, without inquiry into its *origin* or *source*. But the instant that the British government attempted, both as a matter of right and in fact, to deprive them of the "free and exclusive power of legislation in their several provincial legislatures in all cases of taxation and internal polity," a serious and anxious inquiry was instituted into the origin and source of all legitimate political power. The result of the investigation was the disclosure of a fundamental and irreconcilable difference of opinion between the colonies and the British government in respect to the origin and source of all rightful political authority, which laid the foundation of our American Theory of government in antagonism to the European Theory. The colonies contended, on the one hand, that the power of self-government was inherent in the people of the several colonies, and could be exercised only by their authority and consent; while the British ministry insisted that the King of England and his government were the fountain and source of all political power and rightful authority in the colonies, which could be delegated to the people or withheld from them at the pleasure of the sovereign. Here we find the first practical assertion on this continent of the American theory that the power of self-government is inherent in and emanates from the people in each State, Territory, or colony, in opposition to the European theory that the King or Monarch is the fountain of justice and the source of all legitimate power. It is to be hoped that the Attorney General will be able to comprehend the distinction between these two antagonistic theories, since our entire republican system rests upon it, and the conduct of our revolutionary fathers can be vindicated and justified only by assuming that the European theory is wrong and the American theory right. So long, I repeat, as the British government did not, in fact, deprive the colonies of the power of self-government in respect to their internal affairs, differences of opinion could be tolerated upon the theoretical question in regard to *the source* of the power; for the colonies were at liberty to claim, as they did claim, that they exercised it of their own inherent right, in conformity with the royal charters, which only prescribed the form of government under which they were to exercise exclusive legislation in all cases affecting their internal polity. While, on the other hand, the British government could contend, as they did contend, that the colonies possessed the power, not in their own right, but as a favor graciously bestowed by the crown. Practically it made no difference, therefore, to the colonies whether the power was *inherent* or *delegated*—whether they possessed it in their own right, or as a gracious boon from the crown, so long as they were not disturbed in its exclusive possession and unrestricted enjoyment. So it is with the people of the Territories. It makes no practical difference with them whether the power of self-government, subject only to the Constitution, is inherent in themselves, and *recognized* by Congress in the organic act; or whether Congress possesses sovereign power over the Territories for their government, and has *delegated* it to them. Whichever be the source of the power, the result is the same so long as their right of local self-government is not invaded.

ALL LEGISLATIVE POWERS APPERTAIN TO SOVEREIGNTY.

By the terms of the Kansas-Nebraska act, and, indeed, of all the territorial governments now in existence, "the legislative power of the Territory extends to all rightful subjects of legislation consistent with the Constitution of the United States" and the provisions of the organic acts.

In the face of this general grant or recognition of "legislative power" over "all rightful subjects of legislation," the Attorney General tells us that the Territories "have no attribute of sovereignty about them." What does he mean by attribute of sovereignty? "*All legislative powers appertain to*

sovereignty," says Chief Justice Marshall. Every legislative enactment involves an exercise of sovereign power; and every legislative body possesses all the attributes of sovereignty to the extent and within the sphere of its legislative authority. These propositions are recognized by the elementary writers as axiomatic principles which lay at the foundation of all municipal law, and are affirmed in the decisions of the highest judicial tribunals known to our Constitution.

What, then, does the Attorney General mean when he says that the Territories "have no attribute of sovereignty about them?" Surely he does not wish to be understood as denying that the Kansas-Nebraska act, and the organic act of every other Territory in existence, declares that "the legislative power of the Territory shall extend to all rightful subjects of legislation." Does he mean to be understood as asserting that these several acts of Congress are all unconstitutional and void? If not, the Territories certainly have "legislative powers;" and the courts hold that "all legislative powers appertain to sovereignty."

SLAVERY INCLUDED IN THE GRANT OF LEGISLATIVE POWER.

The fact is undeniable that it was the obvious intention of Congress, as manifested by the terms of these several organic acts, to recognize the right of the territorial legislature to exercise those legislative powers which the courts and jurists say appertain to sovereignty, over all rightful subjects of legislation so far as the Constitution will permit; and that slavery was not excepted, nor intended to be excluded from those "rightful subjects of legislation," for the plain and unerring reason that the fourteenth section of the same act provides that it is "the true intent and meaning of this act not to legislate *slavery* into any Territory or State, nor to exclude *it* therefrom, *but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way*, subject only to the Constitution of the United States."

"Slavery," then, was not intended to be excepted from those "rightful subjects of legislation," but was *the subject* which was especially left to the people of the Territory to decide for themselves. The people of the Territory were not only to "regulate" the institution of slavery to suit themselves, but were to be left "perfectly free to *form* and regulate their own domestic institutions in their own way." The people were to be left free "to legislate slavery into any Territory," while they remained in a territorial condition, "or to exclude it therefrom," and "to legislate slavery into any State," after their admission into the Union, "or to exclude it therefrom" just as they pleased, *without any interference by Congress*, and subject to no other limitation or restriction than such as the Constitution of the United States might impose.

The right of legislating upon the subject of slavery in the Territories being thus vested exclusively in the legislature thereof, in the same manner, and subject to the same restrictions, as all other municipal regulations, Congress, out of an abundance of caution, imposed a condition which would have existed even if the organic law had been silent in relation to it, to wit: that the territorial legislature should make no law upon the subject of slavery, or upon any other rightful subject of legislation, *which was not consistent with the Constitution of the United States.* This is the only limitation or restriction imposed upon the power of the territorial legislature upon the subject of slavery; and this limitation would have existed in its full force if the organic act had been silent upon the subject, for the reason that the Constitution being the paramount law, no local law could be made in conflict with it. Whether any enactment which the territorial legislature may pass, in respect to slavery or any other subject, *is* or is *not* consistent with the Constitution," is a *judicial question* which the Supreme Court of the United States alone can authoritatively determine.

In order to facilitate the decision of all questions arising under the territorial enactments upon the subject of slavery especially, a provision was inserted in the 10th section of the Kansas-Nebraska bill, that "writs of error and appeals from the final decisions of the said supreme court [of the Territory] shall be allowed, and may be taken to the Supreme Court of the United States," without reference to the usual limitations in respect to the value of the property, "*in all cases involving title to slaves,*" and "upon any writ of habeas corpus, *involving the question of personal freedom.*" This peculiar provision was incorporated into that bill for the avowed and only purpose of enabling every person who might feel aggrieved by the territorial legislation, or the decisions of the territorial courts in respect to slavery, to take an appeal or prosecute a writ of error directly to the Supreme Court of the United States, and there have the validity of the territorial law, under which the case arose, and the respective rights of the parties affected by it, finally determined. Every man who voted for the Kansas-Nebraska bill agreed to abide, as we were all previously bound, by the Constitution, to respect and obey all such decisions when made. In this form the Kansas-Nebraska bill became a law. In pursuance of its provisions, the legislature of Kansas Territory have at different times enacted various laws upon the subject of slavery. They have adopted friendly and unfriendly legislation. They have made laws for the protection of slave property and repealed them. They have provided judicial remedies and abolished them. They have afforded ample opportunities to any man who felt aggrieved by their legislation to present his case to the judicial tribunals, and obtain a decision from the Supreme Court of the United States upon the validity of any part or the whole of this legislation upon the subject of slavery in that Territory. No man has seen proper to present his case to the court. No territorial enactment upon this subject has been brought to the notice of the court. No case has arisen in which the validity of these or any other territorial enactments were involved even incidentally. There was no one point or fact in the Dred Scott case upon which the validity of a territorial enactment or the power of a territorial legislature upon the subject of slavery could possibly have arisen. In that case, so far as the Territories were concerned, the only question involved was the constitutionality and validity of an *act of Congress* prohibiting slavery on the public domain where there was no territorial government; and the court in their decision very properly and emphatically repudiated and exploded the doctrine that Congress possesses sovereign power over the subject of slavery in the Territories, as claimed by Mr. Buchanan in his letter to Mr Sanford, and by the republicans in their Philadelphia platform. The Dred Scott case, therefore, leaves the question open and undecided in respect to the validity and constitutionality of the various legislative enactments in Kansas and New Mexico, and the other Territories upon the subject of slavery. Whenever a case shall arise under those or any other territorial enactments, affecting slave property or personal freedom in the Territories, and the Supreme Court of the United States shall decide the question, I shall feel myself bound, in honor and duty, to respect and obey the decision, and assist in carrying it into effect in good faith. But the Attorney General still persists in his objection that the Territories cannot legislate upon the subject of slavery for the reason that such legislation involves the exercise of sovereign power. The Territory of New Mexico exercised sovereign power last year in passing an efficient code for the protection of slave property. Does the Attorney General still insist that it is unconstitutional? When he shall institute judicial proceedings to test that question, I doubt not his friend Mr. Lincoln will volunteer his services to assist him in the argument, in return for the valuable services rendered him in the Illinois canvass last year which involved this identical issue. Since I have had some experience in defending the right of the

Territories to decide the slavery question for themselves, in opposition to the joint efforts of these distinguished opponents of popular sovereignty, I am not sure that I would not volunteer to maintain in argument before the Supreme Court the constitutionality of the slave code of New Mexico, even against such fearful odds.

But let us see upon what subjects the territorial legislatures are in the constant habit of making laws without objection from the Attorney General or anybody else.

PROTECTION OF LIFE, LIBERTY, AND PROPERTY.

The Territories are in the habit of enacting laws for the protection of the life, liberty, and property of the citizen, and, in pursuance of those laws, they are also in the habit of depriving the citizen of life, liberty, and property, whenever the same may become forfeited by crime. The right and propriety of exercising this power by the territorial governments have never been questioned. What higher act of sovereign power can any government on earth perform than to deprive a citizen of life in obedience to a law of its own making? If liberty be deemed more sacred than life, it is only necessary to remark that the Territories do, in like manner, deprive a citizen of liberty by imprisoning him for a term of years or for life, at hard labor or in solitary confinement, in compliance with the territorial law and judicial sentence. Can anything short of sovereign power lawfully deprive a citizen of his liberty, load his limbs with chains, and compel him to labor upon the public highways or within the prison walls for no other offence than violating a territorial law? The property of the citizen is also seized and sold by order of court, and the proceeds paid into the public treasury as a penalty for violating the laws of the Territory. If it be true that the Territories "have no attribute of sovereignty about them," the people of the United States have a right to know from their Attorney General why he, as the highest law officer of the government, permits, and does not take the requisite steps to put a stop to the exercise of these sovereign powers of depriving men of life, liberty, and property in Kansas, Nebraska, New Mexico, and the other Territories, under no other authority than the assumed sovereignty of a territorial government? It is no answer to this inquiry to say that the sufferers in all these cases had forfeited their rights by their crimes. My point is that it requires sovereign power to determine by law what acts are criminal—what shall be the punishment—the conditions upon which life may be taken, liberty restrained, and property forfeited. This sovereign power in the Territories is vested exclusively in the territorial legislatures—Congress never having assumed the right to enact a criminal code for any organized Territory of the United States.

POWER OF TAXATION FOR TERRITORIAL PURPOSES.

The territorial governments are also in the habit of imposing and collecting taxes on all private property, real and personal, within their limits, to pay the expenses incident to the administration of justice and to raise revenue for county, town, and city purposes, and to defray such portion of the expenses of the territorial government as are not paid by the United States; and in the event that the owner refuses or fails to pay the assessment, the territorial authorities proceed to sell property therefor, and transfer the title and possession to the purchaser. The only limitation on the power of the territory in this respect is the proviso in the organic law, that "no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents." This exception and qualification in respect to the property of the United States and of non-residents is conclusive evidence that Congress intended to recognize the right of the territorial government to exercise the sovereign power of taxation in all other cases. Will the

Attorney General inform us whether the taxing power is not an attribute of sovereignty? And whether he intends by construction to nullify so much of the organic acts of the several Territories as recognize their right to exercise the power of raising revenue for territorial purposes. It is important that the citizens of the United States—non-residents as well as residents of the Territories—should know whether all of their property in the Territories is exempt from taxation or not. In the classical language of the Attorney General, this "legislative robbery," which can alone proceed from sovereign power, should not be permitted to go on, if it be true that the Territories "have no attribute of sovereignty about them."

POWER OF CREATING CORPORATIONS.

The territorial legislatures are also in the habit of creating corporations—municipal, public and private—for counties, cities, and towns, railroads and insurance offices, academies, schools, and bridges. Is not the power to create a corporation an "attribute of sovereignty?" Upon this point Chief Justice Marshall, in delivering the unanimous opinion of the court, once said: "On what foundation does this argument rest? On this alone; that the power of creating a corporation is one appertaining to sovereignty, and is not expressly conferred on Congress. This is true. But all legislative powers appertain to sovereignty."

ONE OF TWO CONCLUSIONS FOLLOWS.

Since it can no longer be denied, with any show of reason or authority, that all legislative powers appertain to sovereignty, the Attorney General will be obliged to take shelter behind one of two positions—

Either that the Territories have no legislative powers, and, consequently, no right to make laws upon any subject whatever;

Or, that they have sovereign power over all rightful subjects of legislation consistent with the Constitution of the United States, as defined in the organic acts, without excepting slavery.

With all due respect, the first proposition is simply absurd. It contradicts our entire history. It nullifies the most essential provisions of the organic acts of all our Territories. It blots out the legislative department in all our territorial governments. It leaves the people of the Territories without any law, or the power of making any, for the protection of life, liberty, or property, or of any valuable right or privilege pertaining to either; and drives the country, by the necessity of the case, to accept the Philadelphia republican platform of 1856, "that Congress possesses sovereign power over the Territories of the United States for their government."

The second proposition, however, is in harmony with the genius of our *entire political system.* It rests upon the fundamental principle of local self-government as laid down by the continental Congress in 1774, and ratified by the people of each of the thirteen colonies in their several provincial legislatures as the basis upon which the revolutionary struggle was conducted.

It preserves the ideas and principles of the revolution as affirmed in the Jeffersonian plan of government for the Territories in 1784, and confirmed by the Constitution of the United States in 1787.

It conforms to the letter and spirit of the compromise measures of 1850, and of the Kansas-Nebraska act of 1854, and of all our territorial governments now in existence.

"It is founded," as Mr. Buchanan said in his letter accepting the presidential nomination, "on principles as ancient as free government itself, and in accordance with them has simply declared that the people of a Territory, like those of a State, shall decide for themselves whether slavery shall or shall not exist within their limits." "What a happy conception, then, was it for Congress to apply this simple rule—that the will of the majority shall

govern—to the settlement of the question of domestic slavery in the Territories!"—(*Inaugural Address of President Buchanan.*)

IS SLAVERY A FEDERAL OR LOCAL INSTITUTION?

Since the Attorney General persists in his denial that the Territories can legislate for themselves upon the subject of slavery, there is no alternative left to him but the assumption that Congress possesses sovereign power over that question in the Territories as claimed by the republicans in their Philadelphia platform and by Mr. Buchanan in his letter to Mr. Sanford. Surely the power to legislate upon that and all other rightful subjects of legislation exists somewhere. Every "right of property, private relation, condition, or *status*, lawfully existing" in this country, must of necessity be a rightful subject of legislation by *some* legislative body. Where does this sovereign power of legislation for the Territories reside? It must be in one of two places—either in Congress or in the Territories. It can be nowhere else, and must exist somewhere. The Abolitionists insist that Congress possesses sovereign power over the Territories for their government, and, therefore, the North, having the majority, should prohibit slavery. The Democrats contend that Congress has no rightful authority to legislate upon this or any other subject affecting the internal polity of the people, and that "the legislative power of the Territories extends to all rightful subjects of legislation consistent with the Constitution." All powers which are federal in their nature are delegated to Congress. Those which are municipal and domestic in their character are "reserved to the States respectively, or to the people"—"to the States" in respect to all of their inhabitants, and "to the people" of the Territories prior to their admission as States. To which class of powers does the question of slavery belong? Is it a federal or municipal institution? If federal, it appertains to the federal government, and must be subject to the legislation of Congress. If municipal, it belongs to the several States and Territories, and must be subject to their local legislation. The Constitution of the United States has settled this question. A slave is defined in that instrument to be "a person held to service or labor in one State, *under the laws thereof;*" not under the laws of the United States; not "by virtue of the Constitution of the United States;" not by force of any federal authority; but "in one State under the laws thereof." So the fugitive slave law of 1793, which was modified and continued in force by Congress in 1850 as one of the compromise measures of that year, recognizes slavery as *existing in the Territories under the laws thereof*, as follows:

"That when a person held to labor in any of the United States, *or in either of the Territories on the north, west, or south of the river Ohio*, UNDER THE LAWS THEREOF, shall escape into any other of said States or Territories," &c.

The Supreme Court of the United States have decided that "the state of slavery is deemed to be a mere municipal regulation, founded upon and limited to the range of the territorial laws." (16 Peters, 611.) Being "a mere municipal regulation," the right to legislate in regard to it would seem to belong to that legislative body which is authorized to legislate upon all rightful subjects of municipal legislation. Can Congress take cognizance of a "mere municipal regulation" in a Territory, which, in the language of the Supreme Court, "is founded upon and limited to the range of territorial laws?" The Republicans, in their Philadelphia platform, say yes! The Democrats, in their Cincinnati platform, say no! What says Judge Black? Where, Mr. Attorney General, does this sovereign power to legislate upon the "municipal regulation" of slavery reside? Is it in Congress or in the Territories? If in Congress, has it not been *delegated* to the Territory in the organic act under the general grant of "legislative power" over "all rightful subjects of legislation consistent with the Constitution?" If in the

Territory, has it not been *recognized* by Congress in the same act? Whichever be the source of the power, the conclusion is irresistible that the Territories possess the full power, subject, of course, to the Constitution as in all other cases. If, however, slavery exists in the Territories by virtue of the Constitution of the United States, as is contended, it is the imperative duty of Congress to provide for it adequate protection. I can respect the position of those who, so believing, demand federal legislation for the protection of a constitutional right; but what are we to think of those who, while conceding the right, refuse to comply with a constitutional obligation from motives of political expediency? There can be no exception to the rule that a right guaranteed by the Constitution must be protected by law whenever legislation may be essential to its enjoyment.

HAVE CITY CORPORATIONS LARGER POWERS THAN FEDERAL TERRITORIES?

Not content with having stripped the Territories of all power to enact laws for the protection of life, liberty, and property, and for the regulation of their internal polity, all of which appertain to sovereignty, the Attorney General dwarfs the territorial governments below the size of ordinary city corporations. He says: "Indeed, there is, probably, no city in the United States whose powers are not larger than those of a federal Territory." What are the powers of an ordinary city corporation? To levy taxes for municipal purposes—to provide for the collection of the revenue—to sell private property for the non-payment of taxes—to execute the title, and transfer the possession to the purchaser, in case of forced sales—to impose fines and penalties, and inflict punishments for the violation of corporation ordinances. These are some of the powers usually exercised by city corporations. Are not these powers all attributes of sovereignty? Surely he will not deny that they are, since the whole burden of his argument is, that nothing short of sovereign power can deprive a man of his property. How do these sovereign powers become vested in the city corporations? Probably his answer would be that the several States, within whose jurisdiction these cities are situated, as political sovereignties, have the undoubted right to delegate a portion of their sovereign power to those municipal corporations. The answer is satisfactory thus far; but it must be remembered that some of these cities are situated in the Territories, beyond the jurisdiction of any sovereign State, and that their municipal governments exist solely by virtue of territorial authority. Where do the city corporations in the Territories get the sovereign power to lay out and open streets through private property—to condemn the land and divest the owner of his title without his consent and against his protest? Where do they get the power to impose taxes upon the adjoining lands to pay the cost of grading and paving the streets, and to sell the lands, and transfer the title and possession to the purchaser for the non-payment of taxes? These things are being done constantly in Leavenworth, Omaha, Santa Fé, and indeed in all the territorial cities. Where do they get the power? for surely it pertains to sovereignty. From the Territorial governments? We are told that they "have no attributes of sovereignty about them." It is not satisfactory to tell us that these city governments have "larger powers than those of the federal Territories," by whose authority they were created and hold their existence, unless we are informed from what source they derive those "larger powers." Does the creature possess larger powers than the creator? Does the stream rise higher than its source?

Here, again, the Attorney General is driven into a position where he is compelled to abandon his ground, that the Territories "have no attribute of sovereignty about them," and acknowledge that they have legislative powers, at least to the extent of creating city corporations, and delegating to them the sovereign power of taxation for municipal purposes, and divesting

the title to private property for non-payment of taxes, or pronounce the whole system of territorial legislation unconstitutional and void, and deny their power to make laws upon any subject whatever, and finally to fall back on the abolition platform, and assert that Congress possesses sovereign power over the Territories for their government in all cases whatsoever.

DO THE CITIZENS OF THE STATES FORFEIT THEIR INHERENT RIGHT OF SELF-GOVERNMENT BY REMOVING INTO THE TERRITORIES OF THE UNITED STATES?

Who are the people of the Territories that they "have no attributes of sovereignty about them?" They are emigrants, mostly, from the several States of the Union. It is conceded that the people of each State possess the inherent right of self-government in respect to all of their internal affairs. The question then arises, if citizens of Virginia possess this inherent right while they remain in that State, whether they forfeit it by removing to a Territory of the United States? They certainly do not forfeit it, unless there is something in the Constitution of the United States which divests them of it. Is there anything in the Constitution which deprives the citizens of the several States of their inherent right of self-government the moment they remove to a Territory? The only provision which has any bearing upon this subject is the 10th amendment, which provides that all powers not granted to Congress nor prohibited to the States are "reserved to the States respectively, or to the people." Inasmuch as the right to govern the people of the Territories, in relation to their internal polity, is not delegated to Congress, it necessarily follows that it is "reserved to the people" until they become a State, and from that period to the new State, in the same manner as to the other "States respectively." This right of self-government, being a political right, cannot be exercised by the people until they are formed and organized into a political community. By the Constitution it is the right and duty of Congress to organize the people of the Territories into political communities, and, consequently, the people of the Territories cannot exercise the right of self-government until Congress shall have determined that they have people enough to constitute a political community—that they are capable of self-government—and may safely be intrusted with legislative power over all rightful subjects of legislation consistent with the Constitution. When Congress shall have determined all these questions in the affirmative, by organizing the people of a Territory into a political community, with a legislature of their own election, the inherent right of self-government attaches to the people of the Territory in pursuance of the organic act, and "extends to all rightful subjects of legislation consistent with the Constitution." If this conclusion be not correct, it necessarily follows that the people of the States forfeit all their inherent power of self-government the moment they cross the State line and enter a Territory of the United States. By what authority are these inherent rights divested? There can be no other power or paramount authority than the Constitution of the United States. Does that instrument forfeit or divest the right of the people to exercise the inherent power of self-government anywhere, except in the District of Columbia and such other places as are expressly provided for in the Constitution? On the contrary, it expressly recognizes and reserves the right not only "to the States respectively, but to the people." Where, then, is the authority for saying that the people of the several States forfeit and become divested of all their political rights and inherent powers of self-government the moment they cross a State line and enter a Territory of the United States? It certainly cannot be found in the Constitution.

THE JEFFERSONIAN PLAN OF GOVERNMENT FOR THE TERRITORIES.

Despairing, however, of being able to make the Attorney General comprehend the distinction between independent sovereign States, which have

the power to make their own constitutions and establish their own governments, and dependent colonies or territories, which have the right to govern themselves in respect to their internal polity, in conformity to the organic law by which they were established, I will proceed to notice his contradiction of my positive statement that the Jeffersonian plan of government for the Territories was adopted by the Congress of the Confederation on the 23d day of April, 1784. He has truly a summary mode of disposing of important historical facts when they stand in the way of his line of argument, which is peculiar to himself. Are the people of the United States prepared to believe that their learned Attorney General would be so reckless as to deny a well-known historical fact which appears of record, without even referring to the journal for the day on which I had stated the event to have taken place? However this may be, the truth remains as stated in Harper, that the Jeffersonian plan was adopted by Congress on the 23d day of April, 1784, the assertion of Judge Black to the contrary notwithstanding. By reference to the fourth volume of the printed journals of the Congress of the Confederation, on page 378, will be found the following entry:

"Congress resumed the consideration of the report of a committee on a plan for a temporary government of the Western Territory.

"A motion was made by Mr. Gerry, seconded by Mr. Williamson, to amend the report by inserting after the words 'but not of voting,' the following clause:

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

The precise language of this amendment should be carefully noted. It confers, and at the same time defines and limits, *the only power* which it was deemed wise and safe at that day to permit Congress to exercise over the Territories or "New States" as they were then called, to wit: 1st, that they should only exercise such powers as were "necessary for the preservation of peace and good order among the settlers;" and 2d, that even those powers should only be exercised by Congress over the settlers "until they shall assume a temporary government as aforesaid."

So it appears that from the day that the Territory was organized under a temporary government, with a legislature elected by the resident inhabitants, the power of Congress, even "for the preservation of peace and good order among the settlers," ceased; and, the people thereof were left perfectly free to form and regulate their domestic institutions in their own way, subject only to "the principles of the confederation," which conferred on Congress no power over the domestic concerns and internal polity of the people, neither in the States nor in the Territories.

Now let us see whether it be true, as asserted by Judge Black, that this Jeffersonian plan "*was rejected by Congress* and never afterwards referred to by Mr. Jefferson himself."

On the next page, 379, of the same volume of the journal, will be found the following entry:

"The amendment of Mr. Gerry being adopted, the report as amended was agreed to as follows:"—Here the journal contains the entire Jeffersonian plan, the substance of which was embraced in my article in Harper. On the next page, 380, at the end of the Jeffersonian plan, will be found the following entry:—

"On the question to agree to the foregoing, the yeas and nays being required by Mr. Beresford:

N. Hampshire—Mr. Foster	Aye.	Aye.	Connecticut—Mr. Sherman	Aye.	Aye.
Blanchard	Aye.		Wadsworth	Aye.	
Massachusetts—Mr. Gerry	Aye.	Aye.	New York—Mr. De Witt	Aye.	Aye.
Partridge	Aye.		Paine	Aye.	
Rhode Island—Mr. Ellery	Aye.	Aye.	New Jersey—Mr. Beatty	Aye.	Aye.
Howell	Aye.		Dick	Aye.	

Pennsylvania—Mr. Mifflin	Aye.	Aye.	Maryland—Mr. Stone	Aye.	Aye.
Montgomery	Aye.		Chase	Aye.	
Hand	Aye.		N. Carolina—Mr. Williamson	Aye.	Aye.
Virginia—Mr. Jefferson	Aye.	Aye.	Speight	Aye.	
Mercer	Aye.		South Carolina—Mr. Read	No.	No.
Monroe	Aye.		Beresford	No.	

"So it was resolved in the affirmative."

Thus it appears by the journal that the Jeffersonian plan of government for the Territories, instead of having been "rejected by Congress," was actually adopted by the vote of ten States out of the eleven, and by the voice of twenty-two members out of the twenty-four present.

The importance of destroying the authority of this measure, and of the almost unanimous vote of the States and of the members of Congress by which it was adopted, is apparent when we consider that even the Attorney General of the United States would feel some delicacy in charging Thomas Jefferson and his illustrious associates with devising a flagrant scheme of "legislative robbery"—a *projet* "to license a band of marauders to despoil the emigrants crossing their territory"—a measure for "the confiscation of private property" and seizing it "for purposes of lucre or malice!" It will be observed that this error in respect to the rejection of the Jeffersonian plan is not corrected by Judge Black in his appendix.

CONFISCATION OF PRIVATE PROPERTY—POWERS OF A CONSTITUTIONAL CONVENTION IN A TERRITORY.

In respect to the painful apprehensions which afflict the Attorney General, that if we concede to the Territories all the rights of self-government in respect to their internal polity, they may confiscate all the private property within their limits, and "may order the miners to give up every ounce of gold that has been dug at Pike's Peak," I have only to say that the Supreme Court of the United States, in the Dred Scott case, have decided that under the Constitution of the United States a man cannot be deprived of life, liberty, or property in a Territory without due process of law; nor can private property be taken for public uses in a Territory without just compensation; and that I approve of the decision.

In regard to his declaration "that no such power is vested in a territorial legislature, and that those who desire to confiscate private property of any kind *must wait until they get a constitutional convention*, or the machinery of a State government in their hands," I have to say that I am not aware that the people of a Territory, when assembled by their representatives in a "constitutional convention," *without the consent of Congress*, for the purpose of subverting the territorial government established by Congress, (as was the case with the Topeka and Lecompton conventions,) has any higher or greater power than when assembled in their legislature in pursuance of the constitution and the act of Congress. Judge Black frequently refers to what he calls "a constitutional convention" of a Territory, (which is nothing more nor less than a body of men assembled under the authority of a territorial legislature, without the consent of Congress, to form a constitution to take the place of the organic act passed by Congress,) as having full and complete sovereign power over the question of slavery and every other subject pertaining to their internal polity, when he denies the same power to the people and legislature of the Territory by whose authority alone the convention has any legal existence or power. What authority can any such "constitutional convention" have except that which it derives from the legislature which called it into existence, or from the people of the Territory by whom the delegates were elected? If neither the people nor the territorial legislature possess any sovereign power, how can they impart sovereignty to a constitutional convention of their own creation? Suppose, then,

the people of a Territory shall "wait until they get a constitutional convention or the machinery of a State government into their hands" without the consent of Congress, as they did at Topeka, and again at Lecompton, in Kansas, what power will they have to "confiscate private property," or to decide the slavery question, or to perform any other act of sovereignty, when we are told that the Territories "have no attribute of sovereignty about them?" I can understand how the territorial legislatures can exercise legislative power over all rightful subjects of legislation in pursuance of the act of Congress and the Constitution; but I confess my inability to comprehend how they can call "a constitutional convention" without the consent of Congress, and subvert the organic law established by Congress, and exercise all the sovereign powers pertaining to a sovereign State, *before* the Territories become States, and when "they have no attribute of sovereignty about them?"

DOES SLAVERY EXIST IN THE TERRITORIES BY VIRTUE OF THE CONSTITUTION?

Judge Black says that "The Constitution certainly does not establish slavery in the Territories, nor anywhere else." It must be admitted that my article in Harpers' Magazine has had the happy effect of drawing from the Attorney General a declaration as unexpected as it is gratifying to the great body of the democracy, which, if approved and concurred in by "nineteen-twentieths" of the party, as he asserts, will tend in a great measure to restore harmony to its counsels and unity to its action. It is to be presumed that he has not used this language in any equivocal or technical sense, amounting to a mere quibble or play upon words; but that he wishes to be understood as declaring that slavery does not derive its legal existence or validity from the Constitution of the United States, but that the owners of slaves possess the same rights, and no more, under the Constitution, in the several Territories as in each of the States of the Union; and that those rights are not affected *by virtue* of anything in the Constitution, except the provision for the rendition of fugitive slaves, which is the same in the States and Territories.

With this understanding I do not feel disposed to quarrel with Judge Black for his gratuitous assertion that "nobody ever said or thought" that the Constitution established slavery "in the Territories, nor anywhere else," nor with Mr. Buchanan for his statement in his Lecompton message to Congress that—

"It has been solemnly adjudged by the highest judicial tribunal known to our laws that slavery exists in Kansas *by virtue* of the Constitution of the United States. Kansas is, therefore, at this moment as much a slave State as Georgia or South Carolina."

I am also willing to accept in the same spirit of harmony the authoritative explanation which the Attorney General has furnished in his appendix, that the President only meant to say that slavery exists in the Territories *by virtue* of the Constitution in the same sense that "Christianity," Mormonism, Mohammedanism, Paganism, or any other religion, exists in the Territories *by virtue* of the Constitution; and that therefore Kansas is a slave State in the same sense that Georgia and South Carolina are Christian States, or Mormon States, or Mohammedan States, or Pagan States; that "the Constitution does not establish Christianity," nor Mormonism, nor Mohammedanism, nor Paganism in the Territories; but that "Christianity," and of course Mormonism, and Mohammedanism, and Paganism, "exists there *by virtue* of the Constitution," because when a Christian, or Mormon, or Mohammedan, or Pagan "moves into a Territory, he cannot be prevented from taking his religion along with him, nor can he afterwards be legally molested for making its principles the rule of his faith and practice."

After this luminous exposition of the distinction between being *estab-*

lished by and *existing by virtue* of the Constitution, I shall, of course, have no more to say upon the subject except to remark that it is beyond my comprehension.

"THE AXIOMATIC PRINCIPLE OF PUBLIC LAW."

Having repudiated the heresy that the Constitution establishes slavery in the Territories or anywhere else; and demonstrated that the President did not mean anything when he argued in his special message to Congress that Kansas was as much a slave State as Georgia or South Carolina by virtue of the Constitution of the United States, the Attorney General kindly proceeds to expound for my benefit the axiomatic principles of public law as he understands them.

He says:

"It is an axiomatic principle of public law that a right of property, a private relation, condition or *status*, lawfully existing in one State or country, is not changed by the mere removal of the parties to another country, unless the law of that country be in direct conflict with it. For instance: a marriage legally solemnized in France is binding in America; children born in Germany are legitimate here if they are legitimate there; and a merchant who buys goods in New York according to the laws of that State may carry them to Illinois and hold them there under his contract. It is precisely so with the *status* of a negro carried from one part of the United States to another; the question of his freedom or servitude depends on the law of the place where he came from, and depends on that alone, if their be no conflicting law at the place to which he goes or is taken."

IS IT APPLICABLE TO THE QUESTION OF SLAVERY?

Reserving, for the present, the question how far this "axiomatic principle" is accurately stated, and what limitations have been adjudged to be applicable to it by the Supreme Court of the United States, I will first inquire whether "IT IS PRECISELY SO *with the status of a negro carried from one part of the United States to another.*"

Instead of interposing my individual opinion in opposition to that so boldly expressed by the learned Attorney General, I will quote the language of an eminent American jurist, whose authority is everywhere acknowledged. Upon this precise point Judge Story, in his Conflict of Laws, p. 159, says:

"*But we know that no such general effect has in practice ever been attributed to the state of slavery.* There is a uniformity of opinion among foreign jurists and foreign tribunals in giving no effect to the state of slavery of a party, whatever it may have been in the country of his birth or that in which he had been previously domiciled, *unless it is also recognized by the laws of the country of his actual domicil*, and where he is found, and it is sought to be enforced."

After citing various authorities, Judge Story proceeds: "In Scotland the like doctrine has been solemnly adjudged. The tribunals of France have adopted the same rule, even in relation to slaves coming from and belonging to their own colonies. This is also the undisputed law of England." It is unnecessary to burden these pages with the long list of authorities cited by Judge Story to prove his assertion that "there is a uniformity among foreign jurists and foreign tribunals" that the law is precisely the reverse of what Judge Black states it to be in respect to slavery. But if he attempts to escape the force of this uniform current of foreign authorities I will test his respect for the decisions of the Supreme Court of the United States by citing the case of Prigg *vs.* The Commonwealth of Pennsylvania, (16 Peters, p. 611,) in which the court says:

"By the laws of nations, no nation is bound to recognize the state of slavery, as to foreign slaves found within its territorial dominions, when it is in opposition to its own policy and institutions, in favor of the subjects of other nations where slavery is recognized. If it does, it is as a matter of comity, and not a matter of international right. *The state of slavery is deemed to be a mere municipal regulation, founded upon and limited to the range of territorial laws.*"

The same doctrine has been held not only by the highest judicial tribunals in most all of the northern States, but by the supreme court of Louisiana, Missis-

sippi, Kentucky, Missouri, North Carolina, and, indeed, nearly, if not all of the southern States. But I am willing to rest the whole case upon the authority of the Supreme Court of the United States, and to exhort the Attorney General, in his own cassical language, only substituting his name for mine, to cease "fighting the judiciary" and treat the courts with "decent respect." "We are called upon to make a contest, at once unnecessary and hopeless, with the judicial authority of the nation. We object to it. We will not obey Judge Black when he commands us to assault the Supreme Court of the United States. We believe the court to be right, and Judge Black wrong."

If, however, the learned Attorney General shall not be turned from the error of his ways by these words of wisdom from his own pen, I will make another effort to save him, by commending to his especial attention the following paragraph from his own pamphlet:

"In former times a question of constitutional law once decided by the Supreme Court was regarded as settled by all, except that little band of ribald infidels who meet periodically at Boston to blaspheme the religion, and plot rebellion against the laws, of the country!"

CAN THE LAWS OF ONE COUNTRY OPERATE IN ANOTHER WITHOUT ITS CONSENT?

Having shown that Judge Black's "axiomatic principle of public law" in respect to the operation of the laws of one State or country within the jurisdiction of another, as defined and expounded by the highest judicial tribunals in this country and Europe, has no application to, and does not include, slavery; but that, on the contrary, "*the state of slavery is deemed to be a mere municipal regulation, founded upon and limited to the range of the territorial laws;*" and, in the language of the Constitution itself, exists "*in one State* UNDER THE LAWS THEREOF," and *not by virtue* of the Constitution of the United States, nor of any federal authority, nor of any foreign law, nor any international law, I will proceed to examine how far Judge Black has accurately stated the "axiomatic principle of public law," or the law of the comity of nations, by which "a right of property, a private relation, condition, or *status*, lawfully existing in one State or country, is not changed by the mere removal of the parties to another country, unless the law of that other country be in direct conflict with it."

I shall pursue this inquiry out of respect for the great learning displayed by the Attorney General in his philanthropic purpose of enlightening me upon the subject, and not because it has any bearing upon the question at issue, if the decision of the Supreme Court of the United States is to be taken as conclusive evidence, in opposition to the opinion of Judge Black, as to the law of the case. Of course, I express no opinion of my own, since I make it a rule to acquiesce in the decisions of the courts upon all legal questions. In order to have stated the general principle fairly and accurately, Judge Black should have added that whenever the foreign law, or the law of one State is to be enforced in another, it derives its validity from the *consent* of the State or country where it is to be enforced, and *not* from the sovereignty of the State or country from which it came.

The brief space allotted to this reply, already too long, will not permit me to cite, much less quote, the long list of authorities, American, English, and Continental, upon this point. It may be safely assumed as an incontrovertible principle, that the laws of one country can have no force in any other country without its *consent*, expressed or *implied*, and that such consent will be implied, and the tacit adoption of the foreign laws, by the government of the country where they are to be enforced, will be presumed by the courts in all cases where there is no local law to the contrary, and the foreign law does not contravene its own policy. The whole doctrine of the law of comity of nations, as applicable to the question how far the local

law of one State of this Union could operate and be enforced beyond the territorial limits of such State, was fully discussed and deliberately determined in the case of the Bank of Augusta *vs.* Earle, 13 Peters, p. 519, in which Chief Justice Taney, delivering the opinion of the court, said:

"It is needless to enumerate here the instances in which, by the general practice of civilized countries, the laws of the one will, by the comity of nations, be recognized and executed in another, where the rights of individuals are concerned. The laws of contracts made in foreign countries are familiar examples; and the courts of justice have always expounded and executed them according to the laws of the place in which they were made; provided that law was not repugnant to the laws or policy of their own country. *The comity thus extended to other nations is no impeachment of sovereignty It is the voluntary act of the nation by which it is offered;* and is inadmissible when contrary to its policy or prejudicial to its interests. But it contributes so largely to promote justice between individuals, and to produce a friendly intercourse between the sovereignties to which they belong, that courts of justice have continually acted upon it *as a part of the voluntary law of nations.* It is truly said in Story's Conflict of Laws, 37, that 'in the silence of any positive rule affirming, or denying, or restraining the operation of foreign laws, courts of justice *presume the tacit adoption of them by their own government,* unless they are repugnant to its policy or prejudicial to its interests.'"

JUDGE BLACK'S DOCTRINE EQUIVALENT TO THE WILMOT PROVISO.

This is the law of comity applicable to the several States and Territories of this Union, as expounded and defined by the Supreme Court of the United States. Supposing it to be applicable to the question of slavery in the Territories, it would authorize the owner of slaves in Virginia to immigrate to Kansas and carry his slaves with him, and to maintain his legal rights there according to the tenor of the laws of Virginia, *by the consent of Kansas,* expressed or implied; and "in the silence of any positive rule in Kansas, affirming or denying, or restraining the operation of the laws of Virginia, the courts of justice in Kansas will PRESUME *the tacit adoption of them by the government of that Territory,* unless the laws of Virginia are repugnant to the policy of the Territory or prejudicial to its interests. According to this doctrine, the Virginia master takes his slaves there subject to the *lex loci,* and holds them in the Territories "under the laws thereof;" and in the event that the territorial laws are silent upon the subject of slavery, the courts of justice will *presume* that the territorial government has *consented* to the existence of slavery, and has *tacitly* adopted the Virginia laws in respect to the rights of the master who came with his slaves from that State. *But at this very point Judge Black erects an insuperable barrier to the rights of the owner of the slaves.* He argues that the territorial government has no power to act or legislate upon the subject of slavery, and consequently is *incapable* of giving its consent to the operation of the Vinginia laws, while the courts of the Territory cannot *presume* such consent to have been given where it was impossible to give it, nor the Virginia laws to have been *tacitly* adopted by a government which had no power to adopt them. Therefore, unless the power of the territorial legislature to act upon the subject of slavery in the same manner as any other domestic or municipal regulation be conceded, and consequently its right to give or withhold its consent to the operation or tacit adoption of the laws of the slaveholding States be acknowledged, the conclusion is irresistible that Judge Black's axiomatic principle of public law, *as defined by the Supreme Court of the United States,* would strip the owner of slaves in the Territories of all those rights which lawfully existed in the States from which they removed as effectually and inevitably as the Wilmot proviso or the Ordinance of '87. But if it shall be conceded, on the contrary, that slavery is a proper subject of legislation, upon which the territorial legislatures may rightfully act within the limitations of the Constitution, it necessarily follows that they may consent to the operation or adoption of the

laws of the slaveholding States to the fullest extent necessary to the protection and enjoyment of the owners' rights in slave property.

SUPPOSE THE SUPREME COURT WRONG AND JUDGE BLACK RIGHT.

Suppose, however, the Supreme Court of the United States to be wrong in holding that the laws of one country can prevail in other countries only by consent or tacit adoption, and Judge Black to be right also in asserting that the State law in respect to slavery follows the master and his slave into the Territory and remains in force and unalterable until the Territory becomes a State, let us see what would be the practical result of such an "axiomatic principle of public law!" It would enable any one citizen of each of the fifteen slaveholding States to remove into a Territory with his slaves and carry with him the law of slavery peculiar to his own State, and thus put into operation in the Territory, without the consent of the legislature or of Congress, fifteen distinct and conflicting systems of law—some recognizing slaves as real property, and others as personal; some prescribing one rule and measure of punishment for offences, and others a different; some prescribing certain modes and conditions of emancipation, and others different ones; and others still prohibiting emancipation altogether. Fifteen distinct and conflicting systems of law on the same general subject, each deriving its validity from the authority of the State from which the master emigrated, and following the slaves as the individual right of the master, in consequence of his former citizenship of such State, and not by virtue of the Constitution of the United States, nor by the assent of the Territory or of Congress, are put in operation in the same Territory, each by the individual act of one man, in opposition to the wishes of the people, and in defiance of the legislative authority of the Territory, and all to remain unalterable, no matter how inconvenient or unsuitable, until the people get a constitutional convention or the machinery of a State government into their hands.

As the law of slavery which the master carries into the Territory with his slave is his individual right, resulting from his former citizenship in another State, some inquisitive persons may inquire how long the right will abide with him? What will become of it when the Kentuckian sells his slave to the Vermonter; under what law will the Vermonter hold the slave; whether under the law of Kentucky, where the new master never resided, or under the law of Vermont, where slavery is prohibited?

The same "axiomatic principle," as interpreted by Judge Black, would enable any one citizen from each of the thirty-eight States and Territories of this Union to put in operation in any other Territory, without their consent, express or implied, thirty-eight separate and conflicting systems of law upon the subject of marriage and the rights of married women; upon the legitimacy of children and their rights of inheritance; upon the relative rights and duties of guardian and ward, master and apprentice, and every "right of property, private relation, condition or status" lawfully existing in the State or Territory from which they came!

The same construction of this axiomatic principle would enable any one person, black or white, who should emigrate from Europe, Asia, or Africa—from North, South, or Central America—or from the Islands of the Sea, wherever they are recognized as civilized people, to go into the Territories of the United States and carry with them and put in operation all the laws of their respective countries, so far as they recognized any "right of property, private relation, condition or status," no matter how revolting to the moral sense of the community, without the consent of Congress or of the Territory, and when it was known that such laws were contrary to its policy and prejudicial to its interests!

It is true that, according to Judge Black, these results can follow only where there is no local law in conflict with his axiomatic principle of pub-

lic law. It should be borne in mind, however, that if the Territories "have no attribute of sovereignty about them," and consequently no legislative power upon any subject whatever, it remains for him to show how there can be any such conflicting law in the Territories.

ABSURDITY OF JUDGE BLACK'S DOCTRINE CONFESSED BY HIMSELF.

The absurdity of such a doctrine having been exposed, and its folly made manifest and ludicrous in the criticisms of the members of the legal profession upon Judge Black's "Observations," he at length became ashamed of his position, and consequently scouts the idea in his appendix, that he ever dreamed that his "axiomatic principle" would enable the Virginia master to carry with him into the Territories the Virginia law of slavery, and thus furnish judicial remedies and legal protection to his slave property in the Territories. Let us state his position in his own language, *as revised and corrected in his appendix:*

"We have said, and we repeat, that a man does not forfeit his right of property in a slave by migrating with him to a Territory. The title which the owner acquired in the State from whence he came must be respected in his new domicil as it was in the old, until it is legally and constitutionally divested. The proposition is undeniable. *But the absurd inference which some persons have drawn from it is not true, that the master also takes with him the judicial remedies which were furnished him at the place where his title was acquired. Whether the relation of master and slave exists or not is a question which must be determined according to the law of the State in which it was created; but the respective rights and obligations of the parties must be protected and enforced by the law prevailing at the place where they are supposed to be violated.* This is also true with respect to rights of every other kind."

So it appears that the Attorney General of the United States aspires to become the champion of the sanctity of private property by writing a pamphlet for the mere purpose of showing that the owner has a *right* WITHOUT A REMEDY! He seems annoyed that "some persons" should "have drawn the *absurd* inference" from his pamphlet that the courts of justice could or should afford any protection to slave property in the Territories by the application of those judicial remedies and legal provisions, and police regulations which lawfully existed in the State from which the Virginia master took his slaves, and without which the master can neither hold nor appropriate his property, nor defend his right when assailed. If the owner can derive no benefit from the judicial remedies which lawfully existed in the State from which he removed, and the territorial legislature is incapable of legislating upon the subject of slavery, and therefore can furnish no remedies, what protection can the master possibly have for his slave property in the Territories under Judge Black's exposition of the Constitution and laws? He will not consent that Congress shall enact a code of laws for the protection of slavery in the Territories. He denies the right of a territorial legislature to pass laws upon the subject, either for its protection, regulation, or exclusion, for the reason that the Territories "have no attribute of sovereignty about them;" and he pronounces the inference "absurd" that the courts can apply the "judicial remedies" lawfully existing in other States. Denying all judicial remedies, and insisting upon a construction of the Constitution which renders legislative protection impossible, Judge Black claims the gratitude of the slaveholders for having discovered an "axiomatic principle of public law" under which the owner may be robbed of his property, and still console himself with the assurance that he retains a barren, useless, worthless right, under the laws of a State of which he is no longer a citizen, and whence the slave has been removed.

POLITICAL TRIBUNALS CANNOT DETERMINE JUDICIAL QUESTIONS.

I will here dismiss all of these questions of law, and leave them to the courts of justice as the only tribunals under the Constitution which are com-

petent authoritatively to determine them. I have discussed them merely because Judge Black has sought the controversy, and thrust them into it; and not because they have anything to do with the political issues now pending before the country. In all that I have said, I have been content to assume the law to be as decided by the Supreme Court of the United States, without presuming that my individual opinion would either strengthen or invalidate their decisions. By the Constitution all legal and judicial questions are confided to the courts, whose final decisions are conclusive upon everybody until reversed. Political conventions and party platforms can take cognizance only of political questions. I have never recognized the propriety of any political party appealing from the adjudications of the highest judicial tribunals in the land to political assemblages, with a view of either confirming or impairing the force of their decisions. Some years ago when the common council of the city of Chicago adopted a resolution declaring the fugitive slave law unconstitutional and void, and released the police from obeying it or rendering any assistance in its execution, I denied the right of the abolitionists to take an appeal from the decision of the Supreme Court of the United States on a great constitutional question to the common council of a municipal corporation, although its powers are said to be "larger than those of a federal Territory." Soo, too, last year, when I returned to Illinois to canvass the State in behalf of the regular nominees of the democratic party against the combined assaults of the black republicans and federal office holders, I denied their right to appeal from the decision of the Supremo Court in the Dred Scott case to an abolition caucus or opposition meeting with a view of impairing or in any way affecting that decision. Nor do I admit the right or propriety of the democratic party appealing from the decisions of the judicial tribunals to public meetings or political conventions for the purpose of revising, approving, or condemning such decisions, or of instructing the courts how they shall decide in future.

Political parties and conventions should confine themselves to those political issues which may be rightfully determined by the political departments of the government in pursuance of the Constitution. Such is the position of the democratic party and the character of the Cincinnati platform with reference to the question of slavery in the Territories. By that platform the whole subject of slavery agitation is to be banished forever from the halls of Congress and left to the people of the Territories to be disposed of in such manner as they may determine for themselves, subject to such limitations only as the Constitution of the United States may have imposed upon their legislative authority and discretion. The Supreme Court of the United States will determine whether a territorial enactment is repugnant to the Constitution, in the same manner as they decide whether the statute of a State or an act of Congress is repugnant to that instrument; and we, as in duty bound, must all sustain and maintain the authority of the court under the Constitution, whenever the case shall arise and the decision of the court be authoritatively announced.

Why, then, attempt to divide the party and produce strife and discord in our ranks, in these perilous times, by forcing a test of *political fidelity* upon a *judicial question* which has never been decided by the courts and cannot be authoritatively determined by any of the political departments of the government, and upon which the faith of the party is irrevocably pledged, that there should never be any proscription because of differences of opinion which were known to exist when the Kansas and Nebraska act was passed and the Cincinnati platform adopted?

If this new test of party fidelity had been made and insisted upon in 1856, when Mr. Buchanan accepted the presidential nomination with the declaration "THAT THE PEOPLE OF A TERRITORY, LIKE THOSE OF A STATE, SHALL DECIDE FOR THEMSELVES WHETHER SLAVERY SHALL OR SHALL NOT EXIST WITHIN THEIR LIMITS"—

When our candidate for the Vice Presidency was understood to affirm the same principle at Lexington and at Tippecanoe—

When the Secretary of State was known to have devoted all the energies of his great intellect to the vindication of the same principle from the day he wrote the Nicholson letter—

When the Secretary of the Treasury was canvassing Pennsylvania and other northern States, imploring the people to vote for Mr. Buchanan because he was pledged to carry out this great principle of popular sovereignty in the Territories—

When the whole northern democracy and nearly every southern man who canvassed the northern States for the democratic nominees pledged the whole party, north and south, to the support of the Cincinnati platform, as expounded by Mr. Buchanan in his letter of acceptance—

If, I repeat, this new test had then been made and insisted upon, the people of the United States would never have known Judge Black as Attorney General; nor would the power and patronage of a democratic administration have been exhausted in the prosecution of a war of extermination upon all those democrats whose only political sin consists in unwavering fidelity to those principles upon which these eminent men were elevated to their high places.

Is this new test to be urged only for the purpose of controlling the Charleston nomination, and to be abandoned as soon as the convention shall have adjourned? Or is it intended that the nominee, when elected, shall continue the system of proscription which has been recently inaugurated, as the fixed policy of his Administration, and denounce all democrats who repudiate the test as unworthy to hold any federal office or even to serve as chairmen of committees in Congress? Are those fearless and incorruptible democrats who, rejecting all tests which have not received the sanction of the national convention of the party, stand firmly by its time-honored principles, to be called upon to fight the battles and win the victories with the understanding that they shall have no participation in the honors of the triumph? Is the nominee who may become the chosen embodiment of this proscriptive policy to be placed in the proud position of owing his election to the suffrages of those who have already been selected for the sacrifice, and to whose destruction he has become pledged by his nomination? Is it not well that we should understand one another in advance, so that when the day of tribulation comes, if come it must, there shall be no imputation of ingratitude or bad faith?

THE ILLINOIS DEMOCRACY IN FAVOR OF THE CINCINNATI PLATFORM, AND OPPOSED TO ALL NEW TESTS.

Judge Black, however, with more cunning than fairness, attempts to conceal from public view his own inconsistent positions, by studiously and persistently representing me as endeavoring to found a new school of politics, to force new issues upon the party, and to prescribe new tests of political faith, in violation of the Cincinnati platform. Of course, he produces no proof, well knowing that none could be produced, to sustain the truth of the charge. I will produce the proof to the contrary, however, so satisfactory and conclusive that no honest man will be excusable in repeating the charge. No man living has more uniformly and consistently adhered to the platform, usages, and organization of the democratic paaty than I have, under all circumstances, from the period of my earliest manhood. During the whole war of extermination which has been waged upon me with savage ferocity by the combined forces of black republicanism, and the federal administration, I have, on all occasions, avowed my inflexible purpose to maintain the creed of the party as affirmed in the Cincinnati platform, and to resist by all legitimate means the unauthorized interpolation of new articles therein, and all

tests of political fidelity which have not received the sanction of the party in its duly constituted conventions. The Illinois democracy, when assembled in State convention in April, 1858, under circumstances of extreme provocation, for the purpose of nominating a democratic ticket in opposition to the unholy alliance which had been formed by and between the abolitionists, federal office-holders, and black republicans, emphatically endorsed the Cincinnati platform as follows:

"Colonel McClernand, from the committee to prepare resolutions for the consideration of the convention, made the following report; which was read, and on motion each resolution was separately read and *unanimously adopted:*

"1. *Resolved*, That the democratic party of the State of Illinois, through their delegates in general convention assembled, do reassert and declare the principles avowed by them as when, on former occasions, they have presented their candidates for popular suffrage.

"2. *Resolved, That they are unalterably attached to, and will maintain inviolate, the principles declared by the national convention at Cincinnati, in June*, 1856.

"3. *Resolved*, That they avow with renewed energy their devotion to the federal union of the United States, their earnest desire to avert sectional strife, their determination to maintain the sovereignty of the States, and to protect every State, and the people thereof, in all their constitutional rights.

"4. *Resolved*, That the platform of principles established by the National Democratic Convention at Cincinnati *is the only authoritative exposition of democratic doctrine, and that they deny the right of any power on earth, except a like body, to change or interpolate that platform, or to prescribe new and different tests;* THAT THEY WILL NEITHER DO IT THEMSELVES, *nor permit it to be done by others*, BUT WILL RECOGNIZE ALL MEN AS DEMOCRATS WHO STAND BY AND UPHOLD DEMOCRATIC PRINCIPLES."

These resolutions were introduced into the Senate by me, on the 29th day of April, 1858, a few days after their adoption by the Illinois State convention, with this emphatic endorsement:

"I will furnish to the reporter the whole series, *as furnishing the platform upon which the Illinois democracy stand*, AND BY WHICH I INTEND TO ABIDE."

Thus it appears from the record made up at the time, that the real issue between the federal administration, as the allies of the black republicans of Illinois on the one hand, and the Illinois democracy on the other, in that memorable struggle, was that the administration claimed the right to "*change and interpolate the Cincinnati platform, and prescribe new and different tests;*" while the gallant democracy of that noble State denied "the right of any power on earth, except a like body," to change the Cincinnati platform or prescribe new tests; and declared that "*they will neither do it themselves, nor permit it to be done by others*, BUT WILL RECOGNIZE ALL MEN AS DEMOCRATS WHO STAND BY AND UPHOLD DEMOCRATIC PRINCIPLES."

We were assailed and proscribed because we did stand by the Cincinnati platform; because we would not recognize the right of any power on earth, except a regularly constituted convention of the party to change the platform and interpolate new articles into the creed; because we would not sanction the new issues and submit to the new tests; because we would not proscribe any democrat nor permit the proscription of democrats in consequence of difference of opinion upon questions which had arisen subsequently to the adoption of the platform; and because we recognized all men as democrats who supported the nominees and upheld the principles of the party as defined by the last national convention. It was upon this issue and for these reasons that the power and patronage of the federal government were wielded in concert with the black republicans for the election of their candidates in preference to the regular nominees of the democratic party. This system of proscription still continues in Illinois, and is being extended throughout the Union, with the view of controlling the Charleston nomination. Fidelity to the Cincinnati platform and opposition to the new issues and tests prescribed by men in power, in direct conflict with the professions upon which they were elected, are deemed disqualifications for office and cause of removal.

The reasons for singling me out as the especial object for anathema will be found on the first page of the Attorney General's pamphlet, where he says:

"He [Douglas] has been for years a working, struggling candidate for the presidency!"

Suppose it were true, that I am a presidential aspirant; does that fact justify a combination by a host of other presidential aspirants, each of whom may imagine that his success depends upon my destruction, and the preaching a crusade against me for boldly avowing now the same principles to which they and I were pledged at the last presidential election? Is this a sufficient excuse for devising a new test of political orthodoxy; and, under pretext of fidelity to it, getting up a set of bolting delegates to the Charleston convention in those States where they are unable to control the regular organization? The time is not far distant when the democracy of the whole Union will be called upon to consider and pronounce judgment upon this question.

What authority has the Attorney General, aside from his fears and hopes, for saying that I am "a working, struggling candidate for the presidency?" My best friends know that I have positively and peremptorily refused to have anything to do with the machinery of the conventions in the several States by which the delegates to the Charleston convention are to be appointed. They know that personally I do not desire the presidency at this time—that I prefer a seat in the Senate for the next six years, with the chance of a re-election, to being President for four years at my period of life. They know that I will take no steps to obtain the Charleston nomination, that I will make no sacrifice of principle, no concealment of opinions, no concession to power for the purpose of getting it. They know, also, that I only consented to the use of my name upon their earnest representations that the good of the democratic party required it, and even then, upon the express condition that the democratic party shall determine in the presidential election of 1860, as I have full faith they will, to adhere to the principles embodied in the compromise measures of 1850, and approved by the people in the presidential election of 1852, and incorporated into the Kansas-Nebraska act of 1854, and confirmed by the Cincinnati platform and ratified by the people in the presidential election of 1856. Nor can the Attorney General pretend to be ignorant of the fact that the public were informed long since that, "If, on the contrary, it shall become the policy of the democratic party, which I cannot anticipate, to repudiate these their time-honored principles, on which we have achieved so many patriotic triumphs, and in lieu of them the convention shall interpolate into the creed of the party such new issues as the revival of the African slave trade, or a congressional slave code for the Territories, or the doctrine that the Constitution of the United States either establishes or prohibits slavery in the Territories beyond the power of the people legally to control it, as other property, it is due to candor to say that in such an event I could not accept the nomination if tendered to me." Is this the language of a man who is working and struggling for the presidency upon whatever terms and by the use of whatever means it could be obtained? Or does this language justify that other charge, that I am making new issues and prescribing new tests in violation of the Cincinnati platform?

While I could nave no hesitation in voting for the nominee of my own party, with whom I might differ on certain points, in preference to the candidate of the Black Republican Party, whose whole creed is subversive of the Constitution and destructive of the Union, I am under no obligation to become a candidate upon a platform that I would not be willing to carry out in good faith, nor to accept the presidency on the implied pledge to carry

into effect certain principles, and then administer the government in direct conflict with them. In other words, I prefer the position of Senator, or even that of a private citizen, where I would be at liberty to defend and maintain the well-defined principles of the democratic party, to accepting a presidential nomination upon a platform incompatible with the principle of self-government in the Territories, or the reserved rights of the States, or the perpetuity of the Union under the Constitution. In harmony with these views, I said in those very speeches in Ohio, to which Judge Black refers in his appendix, that I was in favor of conducting the great struggle of 1860 upon "the Cincinnati platform *without the addition of a word or the subtraction of a letter.*" Yet, in the face of all these facts, the Attorney General does not hesitate to represent me as attempting to establish a new school of politics, to force new issues upon the party, and prescribe new tests of democratic faith.

In conclusion, I have only to suggest to Judge Black and his confederates in this crusade, whether it would not be wiser for them, and more consistent with fidelity to the party which placed them in power, to exert their energies and direct all their efforts to the redemption of Pennsylvania from the thraldom of black republicanism than to continue their alliance with the black republicans in Illinois, with the vain hope of dividing and defeating the democratic party in the only western or northern State which has never failed to cast her electoral vote for the regular nominee of the democratic party at any presidential election.

WASHINGTON, *October*, 1859.

OBSERVATIONS

ON

SENATOR DOUGLAS'S

VIEWS OF

POPULAR SOVEREIGNTY,

AS EXPRESSED IN

HARPERS' MAGAZINE, FOR SEPTEMBER, 1859.

WASHINGTON:
THOMAS McGILL, PRINTER.
1859.

PREFATORY NOTE.

The writer of these "Observations" waited a few days after the appearance of Harpers' Magazine for September, in the confident expectation that somebody, with more leisure and greater ability, would fully express the almost universal dissent of the public mind from the views contained in Mr. Douglas's article. He yielded to "the request of friends" only when he saw what he supposed to be a general wish for a discussion more extended than could be given of such a subject in newspaper paragraphs. Why not put the writer's name to it? Because the truth or falsehood of what is written does not depend on the name or character of him who wrote it. *Ito libellum!* Let it go forth, and find what entertainment it can.

WASHINGTON, *Sept.* 7, 1859.

OBSERVATIONS.

Every one knows that Mr. Douglas, the Senator from Illinois, has written and printed an elaborate essay, comprising thirty-eight columns of Harpers' Magazine, in which he has undertaken to point out the "dividing line between federal and local authority." Very many persons have glanced over its paragraphs to catch the leading ideas without loss of time, and some few have probably read it with care.

Those who dissent from the doctrines of this paper owe to its author, if not to his arguments, a most respectful answer. Mr. Douglas is not the man to be treated with a disdainful silence. His ability is a fact unquestioned; his public career, in the face of many disadvantages, has been uncommonly successful; and he has been for many years a working, struggling candidate for the Presidency. He is, moreover, the Corypheus of his political sect—the founder of a new school—and his disciples naturally believe in the infallible verity of his words as a part of their faith.

The style of the article is, in some respects, highly commendable. It is entirely free from the vulgar clap-trap of the stump, and has no vain adornment of classical scholarship. But it shows no sign of the eloquent Senator; it is even without the logic of the great debater. Many portions of it are very obscure. It seems to be an unsuccessful effort at legal precision; like the writing of a judge, who is trying in vain to give good reasons for a wrong decision on a question of law which he has not quite mastered.

With the help of Messrs. Seward and Lincoln, he has defined accurately enough the platform of the so-called Republican party; and he does not attempt to conceal his conviction that their doctrines are, in the last degree, dangerous. They are, most assuredly, full of evil and saturated with mischief. The "irrepressible conflict" which they speak of with so much pleasure between the "opposing and enduring forces" of the Northern and Southern States, will be fatal, not merely to the peace of the country, but to the existence of the Government itself. Mr. Douglas knows this, and he knows, also, that the Democratic party is the only power which is, or can be, organized to resist the Republican forces or oppose their hostile march upon the capital. He who divides and weakens the friends of the country at such a crisis in her fortunes, assumes a very grave responsibility.

Mr. Douglas separates the Democratic party into three classes, and describes them as follows:

"*First.* Those who believe that the Constitution of the United States neither establishes nor prohibits slavery in the States or Territories beyond the power of the people legally to control it, but 'leaves the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States.'

"*Second.* Those who believe that the Constitution establishes slavery in the Territories, and withholds from Congress and the Territorial Legislature the power to control it, and who insist that, in the event the Territorial Legislature fails to enact the requisite laws for its protection, it becomes the imperative duty of Congress to interpose its authority and furnish such protection.

Third. Those who, while professing to believe that the Constitution establishes slavery in the Territories beyond the power of Congress or the Territorial Legislature to control it, at the same time protest against the duty of Congress to interfere for its protection; but insist that it is the duty of the judiciary to protect and maintain slavery in the Territories without any law upon the subject."

We give Mr. Douglas the full benefit of his own statement. This is his mode of expressing those differences, which, he says, disturb the harmony, and threaten the integrity, of the American Democracy. These passages should, therefore, be most carefully considered.

The first class is the one to which he himself belongs, and to both the others he is equally opposed. He has no right to come between the second and third class. If the difference which he speaks of does exist among his opponents, it is their business, not his, to settle it or fight it out. We shall therefore confine ourselves to the dispute between Mr. Douglas and his followers on the one hand, and the rest of the Democratic party on the other, presuming that he will be willing to observe the principle of non-intervention in all matters with which he has no concern.

We will invert the order in which he has discussed the subject, and endeavor to show—

1. That he has not correctly stated the doctrine held by his opponents; and,

2. That his own opinions, as given by himself, are altogether unsound.

I. He says that a certain portion of the Democratic party believe, or profess to believe, that *the Constitution establishes slavery* in the Territories, and insist that it is the duty of the judiciary to maintain it there *without any law* on the subject. We do not charge him with any intention to be unfair: but we assert, that he has in fact done wrong to, probably, nineteen-twentieths of the party, by attempting to put them on grounds which they never chose for themselves.

The Constitution certainly does not *establish* slavery in the Territories, nor anywhere else. Nobody in this country ever thought or said so. But the Constitution regards as sacred and inviolable all the rights which a citizen may legally acquire in a State. If a man acquires property of any kind in a State, and goes with it into a Territory, he is not for that reason to be stripped of it. Our simple and plain proposition is, that the legal owner of a slave or other chattel may go with it into a Federal Territory without forfeiting his title.

Who denies the truth of this, and upon what ground can it be controverted? The reasons which support it are very obvious and very conclusive. As a jurist and a statesman, Mr. Douglas ought to be familiar with them, and there was a time when he was supposed to understand them very well. We will briefly give him a few of them.

1. It is an axiomatic principle of public law, that a right of

property, a private relation, condition or *status*, lawfully existing in one State or country, is not changed by the mere removal of the parties to another country, unless the law of that other country be in direct conflict with it. For instance: A marriage legally solemnized in France is binding in America; children born in Germany are legitimate here if they are legitimate there; and a merchant who buys goods in New York according to the laws of that State may carry them to Illinois and hold them there under his contract. It is precisely so with the *status* of a negro carried from one part of the United States to another;—the question of his freedom or servitude depends on the law of the place where he came from, and depends on that alone, if there be no conflicting law at the place to which he goes or is taken. The Federal Constitution therefore recognizes slavery as a legal condition wherever the local governments have chosen to let it stand unabolished, and regards it as illegal wherever the laws of the place have forbidden it. A slave being property in Virginia, remains property; and his master has all the rights of a Virginia master wherever he may go, so that he go not to any place where the local law comes in conflict with his right. It will not be pretended that the Constitution itself furnishes to the Territories a conflicting law. It contains no provision that can be tortured into any semblance of a prohibition.

2. The dispute on the question whether slavery or freedom is local or general, is a mere war of words. The black race in this country is neither bond nor free by virtue of any general law. That portion of it which is free is free by virtue of some local regulation, and the slave owes service for a similar reason. The Constitution and laws of the United States simply declare that everything done in the premises by the State governments is right, and they shall be protected in carrying it out. But free negroes and slaves may both find themselves outside of any State jurisdiction, and in a Territory where no regulation has yet been made on the subject. There the Constitution is equally impartial. It neither frees the slave nor enslaves the freeman. It requires both to remain in *statu quo* until the *status* already impressed upon them by the law of their previous domicil shall be changed by some competent local authority. What is competent local authority in a Territory will be elsewhere considered.

3. The Federal Constitution carefully guards the rights of private property against the Federal Government itself, by declaring that it shall not be taken for public use without compensation, nor without due process of law. Slaves are private property, and every man who has taken an oath of fidelity to the Constitution is religiously, morally, and politically bound to regard them as such. Does anybody suppose that a Constitution which acknowledges the sacredness of private property so fully would wantonly destroy that right, not by any words that are found in it, but by mere implication from its general principles? It might as well be asserted that the general principles of the Constitution gave Lane and Montgomery a license to steal horses in the valley of the Osage.

4. The Supreme Court of the United States has decided the question. After solemn argument and careful consideration, that august tribunal has announced its opinion to be that a slaveholder, by going into a Federal Territory, does not lose the title he had to his negro in the State from which he came. In former times, a question of constitutional law once decided by the Supreme Court was regarded as settled by all, except that little band of ribald infidels, who meet periodically at Boston to blaspheme the religion, and plot rebellion against the laws, of the country. The leaders of the so-called Republican party have lately been treading close on the heels of their abolition brethren; but it is devoutly to be hoped that Mr. Douglas has no intention to follow their example. In case he is elected President, he must see the laws faithfully executed. Does he think he can keep that oath by fighting the judiciary?

5. The legislative history of the country shows that all the great statesmen of former times entertained the same opinion, and held it so firmly that they did not even think of any other. It was universally taken for granted that a slave remained a slave, and a freeman a freeman, in the new Territories, until a change was made in their condition by some positive enactment. Nobody believed that a slave might not have been taken to and kept in the Northwest Territory if the ordinance of 1787 or some other regulation had not been made to prohibit it. The Missouri restriction of 1820 was imposed solely because it was understood (probably by every member of that Congress) that, in the absence of a restriction, slave property would be as lawful in the eye of the Constitution above 36° 30′, as below; and all agreed, that the mere absence of a restriction did, in fact, make it lawful below the compromise line.

6. It is right to learn wisdom from our enemies. The Republicans do not point to any express provision of the Constitution, nor to any general principle embraced in it, nor to any established rule of law, which sustains their views. The ablest men among them are driven by stress of necessity to hunt for arguments in a code unrevealed, unwritten, and undefined, which they put above the Constitution or the Bible, and call it "higher law." The ultra abolitionists of New England do not deny that the Constitution is rightly interpreted by the Democrats, as not interfering against slavery in the Territories; but they disdain to obey what they pro nounce to be "an agreement with death and a covenant with hell."

7. What did Mr. Douglas mean when he proposed and voted for the Kansas-Nebraska bill repealing the Missouri restriction? Did he intend to tell southern men that notwithstanding the repeal of the prohibition, they were excluded from those Territories as much as ever? Or did he not regard the right of a master to his slave perfectly good whenever he got rid of the prohibition? Did he, or anybody else at that time, dream that it was necessary to make a positive law in favor of the slaveholder before he could go there with safety? To ask these questions is to answer them? The Kansas-Nebraska bill was not meant as a delusion or a snare. It

was well understood that the repeal alone of the restriction against slavery would throw the country open to everything which the Constitution recognized as property.

We have thus given what we believe to be the opinions held by the great body of the Democratic party: namely, that the Federal Constitution does not establish slavery anywhere in the Union; that it permits a black man to be either held in servitude or made free as the local law shall decide; and that in a Territory where no local law on the subject has been enacted, it keeps both the slave and the free negro in the *status* already impressed upon them, until it shall be changed by competent local authority. We have seen, that this is sustained by the reason of the thing, by a great principle of public law, by the words of the Constitution, by a solemn decision of the Supreme Court, by the whole course of our legislation, by the concession of our political opponents, and, finally, by the most important act in the public life of Mr. Douglas himself.

Mr. Douglas imputes another absurdity to his opponents when he charges them with insisting "that it is the duty of the judiciary to protect and maintain slavery in the Territories *without any law upon the subject.*" The judge who acts without law acts against law; and surely no sentiment so atrocious as this was ever entertained by any portion of the Democratic party. The right of a master to the services of his slave in a Territory is not against law nor without law, but in full accordance with law. If the law be against it we are all against it. Has not the emigrant to Nebraska a legal right to the ox team, which he bought in Ohio, to haul him over the plains? Is not his title as good to it in the Territory, as it was in the State where he got it? And what should be said of a judge who tells him that he is not protected, or that he is maintained, in the possession of his property "without any law upon the subject?"

II. We had a right to expect from Mr. Douglas at least a clear and intelligible definition of his own doctrine. We are disappointed. It is hardly possible to conceive anything more difficult to comprehend. We will transcribe it again, and do what can be done to analyze it.

"Those who believe that the Constitution of the United States neither establishes nor prohibits slavery in the States or Territories beyond the power of the people legally to control it, but 'leaves the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States.'"

The Constitution neither establishes nor prohibits slavery in the States or Territories. If it be meant by this that the Constitution does not, *proprio vigore*, either emancipate any man's slave, or create the condition of slavery, and impose it on free negroes, but leaves the question of every black man's *status*, in the Territories as well as in the States, to be determined by the local law, then we admit it, for it is the very same proposition which we have been trying to prove. But if, on the contrary, it is to be understood as an assertion that

the Constitution does not permit a master to keep his slave, or a free negro to have his liberty, in all parts of the Union where the local law does not interfere to prevent it, then the error is not only a very grave one, but it is also absurd and self-contradictory.

The Constitution neither establishes nor prohibits slavery in the States or Territories beyond the power of the people legally to control it. This is sailing to Point-No-Point again. Of course a subject, which is *legally* controlled, cannot be beyond the power that controls it. But the question is, what constitutes legal control, and when the people of a State or Territory are in a condition to exercise it.

The Constitution of the United States * * * * leaves the people perfectly free, * * * *and subject only to the Constitution of the United States.* This carries us round a full circle, and drops us precisely at the place of beginning. That the Constitution leaves everybody subject to the Constitution, is most true. We are far from denying it. We never heard it doubted, and expect we never will. But the statement of it proves nothing, defines nothing, and explains nothing. It merely darkens the subject, as words without meaning always do.

But notwithstanding all this circuity of expression and consequent opaqueness of meaning in the magazine article of Mr. Douglas, we think we can guess what his opinions are or will be when he comes to reconsider the subject. He will admit (at least he will not undertake to deny) that the *status* of a negro, whether of servitude or freedom, accompanies him wherever he goes, and adheres to him in every part of the Union until he meets some local law which changes it.

It will also be agreed that the people of a State, through their Legislature, and the people of a Territory, in the constitution which they may frame preparatory to their admission as a State, can regulate and control the condition of the subject black race within their respective jurisdictions, so as to make them bond or free.

But here we come to the point at which opinions diverge. Some insist that no citizen can be deprived of his property in slaves, or in anything else, *except* by the provision of a State constitution or by the act of a State Legislature; while others contend that an unlimited control over private rights may be exercised by a Territorial Legislature as soon as the earliest settlements are made.

So strong are the sentiments of Mr. Douglas in favor of the latter doctrine, that if it be not established he threatens us with Mr. Seward's "irrepressible conflict," which shall end only with the universal abolition or the universal dominion of slavery. On the other hand, the President, the Judges of the Supreme Court, nearly all the Democratic members of Congress, the whole of the party South, and a very large majority North, are penetrated with a conviction, that no such power is vested in a Territorial Legislature, and that those who desire to confiscate private property of any kind must wait until they get a constitutional convention

or the machinery of a State government into their hands. We venture to give the following reasons for believing that Mr. Douglas is in error:

The Supreme Court has decided that a Territorial Legislature has not the power which he claims for it. That alone ought to be sufficient. There can be no law, order, or security for any man's rights, unless the judicial authority of the country be upheld. Mr. Douglas may do what he pleases with political conventions and party platforms, but we trust he will give to the Supreme Court at least that decent respect, which none but the most ultra Republicans have yet withheld.

The right of property is sacred, and the first object of all human government is to make it secure. Life is always unsafe where property is not fully protected. This is the experience of every people on earth, ancient and modern. To secure private property was a principal object of *Magna Charta.* Charles I. afterwards attempted to violate it, but the people rose upon him, dragged him to the block, and severed his head from his body. At a still later period another monarch for a kindred offence was driven out of the country, and died a fugitive and an outcast. Our own Revolution was provoked by that slight invasion upon the right of property which consisted in the exaction of a trifling tax. There is no government in the world, however absolute, which would not be disgraced and endangered by wantonly sacrificing private property even to a small extent. For centuries past such outrages have ceased to be committed in times of peace among civilized nations.

Slaves are regarded as property in the Southern States. The people of that section buy and sell, and carry on all their business, provide for their families, and make their wills and divide their inheritances on that assumption. It is manifest to all who know them, that no doubts ever cross their minds about the rightfulness of holding such property. They believe they have a direct warrant for it, not only in the examples of the best men that ever lived, but in the precepts of Divine Revelation itself; and they are thoroughly satisfied that the relation of master and slave is the only one which can possibly exist there between the white and the black race without ruining both. The people of the North may differ from their fellow-citizens of the South on the whole subject, but knowing, as we all do, that these sentiments are sincerely and honestly entertained, we cannot wonder that they feel the most unspeakable indignation when any attempt is made to interfere with their rights. This sentiment results naturally and necessarily from their education and habits of thinking. They cannot help it, any more than an honest man in the North can avoid abhorring a thief or housebreaker.

The jurists, legislators, and people of the Northern States, have always sacredly respected the right of property in slaves held by their own citizens within their own jurisdiction. It is a remarkable fact, very well worth noticing, that no Northern State ever passed any law to take a negro from his master. All laws for the

abolition of slavery have operated only on the unborn descendants of the negro race, and the vested rights of masters have not been disturbed in the North more than in the South.

In every nation under heaven, civilized, semi-barbarous, or savage, where slavery has existed in any form at all analogous to ours, the rights of the masters to the control of their slaves as property have been respected; and on no occasion has any government struck at those rights, except as it would strike at other property. Even the British Parliament, when it emancipated the West India slaves, though it was legislating for a people three thousand miles away, and not represented, never denied either the legal or the natural right of the slave owner. Slaves were admitted to be property, and the Government acknowledged it by paying their masters one hundred millions of dollars for the privilege of setting them free.

Here, then, is a species of property which is of transcendent importance to the material interests of the South—which the people of that region think it right and meritorious in the eyes of God and good men to hold—which is sanctioned by the general sense of all mankind among whom it has existed—which was legal only a short time ago in all the States of the Union, and was then treated as sacred by every one of them—which is guaranteed to the owner as much as any other property is guaranteed by the Constitution;—and Mr. Douglas thinks that a Territorial Legislature is competent to take it away. We say, No; the supreme legislative power of a sovereign State alone can deprive a man of his property.

This proposition is so plain, so well established, and so universally acknowledged, that any argument in its favor would be a mere waste of words. Mr. Douglas does not deny it, and it did not require the thousandth part of his sagacity to see that it was undeniable. He claims for the Territorial governments the right of confiscating private property on the ground that *those governments* ARE *sovereign*—have an uncontrollable and independent power over all their internal affairs. That is the point which he thinks is to split the Democracy and impale the nation. But it is so entirely erroneous, that it must vanish into thin air as soon as it comes to be examined.

A Territorial government is merely provisional and temporary. It is created by Congress for the necessary perservation of order and the purposes of police. The powers conferred upon it are expressed in the organic act, which is the charter of its existence, and which may be changed or repealed at the pleasure of Congress. In most of those acts the power has been expressly reserved to Congress of revising the Territorial laws, and the power to repeal them exists without such reservation. This was asserted in the case of Kansas by the most distinguished Senators in the Congress of 1856. The President appoints the Governor, judges, and all other officers whose appointment is not otherwise provided for, directly or indirectly, by Congress. Even the expenses of the Territorial government are paid out of the Federal treasury. The truth

is, they have no attribute of sovereignty about them. The essence of sovereignty consists in having no superior. But a Territorial government has a superior in the United States Government, upon whose pleasure it is dependent for its very existence—in whom it lives, and moves, and has its being—who has made, and can unmake it with a breath.

Where does this sovereign authority to deprive men of their property come from? This transcendent power, which even despots are cautious about using, and which a constitutional monarch never exercises—how does it get into a Territorial Legislature? Surely it does not drop from the clouds: it will not be contended, that it accompanies the settlers, or exists in the Territory before its organization. Indeed it is not to the people, but to the government of a Territory, that Mr. Douglas says it belongs. Then Congress must give the power at the same time that it gives the Territorial government. But not a word of the kind is to be found in any organic act that ever was framed. It is thus that Mr. Douglas's argument runs itself out into nothing.

But if Congress *would* pass a statute expressly to give this sort of power to the Territorial governments, they still would not have it; for the Federal Government itself does not possess any control over men's property in the Territories. That such power does not exist in the Federal Government needs no proof: Mr. Douglas admits it fully and freely. It is, besides, established by the solemn decision of Congress, by the assent of the Executive, and by the direct ratification of the people acting in their primary capacity at the polls. In addition to all this, the Supreme Court have deliberately adjudged it to be an unalterable and undeniable rule of constitutional law.

This acknowledgment that Congress has no power, authority, or jurisdiction over the subject, literally *obliges* Mr. Douglas to give up his doctrine, or else to maintain it by asserting that a power which the Federal Government *does not possess* may be *given by Congress to the Territorial government*. The right to abolish African slavery in a Territory is not granted by the Constitution to Congress; it is withheld, and therefore the same as if expressly prohibited. Yet Mr. Douglas declares that Congress may give it to the Territories. Nay; he goes further, and says that the *want* of the power in Congress is the *very reason* why it can delegate it—the general rule, in his opinion, being that Congress cannot delegate the powers it possesses, but may delegate such, "and only such, as Congress cannot exercise under the Constitution!" By turning to pages 520 and 521, the reader will see that this astounding proposition is actually made, not in jest or irony, but solemnly, seriously, and, no doubt, in perfect good faith. On this principle, as Congress cannot exercise the power to make an *ex post facto* law, or a law impairing the obligation of contracts, *therefore* it may authorize such laws to be made by the town councils of Washington city, or the levy court of the District. If Congress passes an act to hang a man without trial, it is void,

and the judges will not allow it to be executed; but the power to do this prohibited thing can be constitutionally given by Congres to a Territorial Legislature!

We admit that there are certain powers bestowed upon the General Government which are in their nature judicial or executive. With them Congress can do nothing, except to see that they are executed by the proper kind of officers. It is also true that Congress has certain legislative powers which cannot be delegated. But Mr. Douglas should have known that he was not talking about powers which belonged to either of these classes, but about a legislative jurisdiction totally forbidden to the Federal Government, and incapable of being delegated, for the simple reason that it does not constitutionally exist.

Will anybody say that such a power ought, as a matter of policy, or for reasons of public safety, to be held by the provisional governments of the Territories? Undoubtedly no true patriot, nor no friend of justice and order, can deliberately reflect on the probable consequences without deprecating them.

This power over property is the one which in all governments has been most carefully guarded, because the temptation to abuse it is always greater than any other. It is there that the subjects of a limited monarchy watch their king with the greatest jealousy. No republic has ever failed to impose strict limitations upon it. All free people know, that if they would remain free, they must compel the government to keep its hands off their private property; and this can be done only by tying them up with careful restrictions. Accordingly our Federal Constitution declares that "no person shall be deprived of his property except by due process of law," and that "private property shall not be taken for public use without just compensation." It is universally agreed that this applies only to the exercise of the power by the Government of the United States. We are also protected against the State governments by a similar provision in the State constitutions. Legislative robbery is therefore a crime which cannot be committed either by Congress or by any State Legislature, unless it be done in flat rebellion to the fundamental law of the land. But if the Territorial governments have this power, then they have it without any limitation whatsoever, and in all the fulness of absolute despotism. They are omnipotent in regard to all their internal affairs, for they are *sovereigns, without a constitution to hold them in check.* And this omnipotent sovereignty is to be wielded by a few men suddenly drawn together from all parts of America and Europe, unacquainted with one another, and ignorant of their relative rights. But if Mr. Douglas is right, those governments have all the absolute power of the Russian Autocrat. They may take every kind of property in mere caprice, or for any purpose of lucre or malice, without process of law, and without providing for compensation. The Legislature of Kansas, sitting at Lecompton or Lawrence, may order the miners to give up every ounce of gold that has been dug

at Pike's Peak. If the authorities of Utah should license a band of marauders to despoil the emigrants crossing the Territory, their sovereign right to do so cannot be questioned. A new Territory may be organized, which Southern men think should be devoted to the culture of cotton, while the people of the North are equally certain that grazing alone is the proper business to be carried on there. If one party, by accident, by force, or by fraud, has a majority in the Legislature, the negroes are taken from the planters; and if the other set gains a political victory, it is followed by a statute to plunder the graziers of their cattle. Such things cannot be done by the Federal Government, nor by the governments of the States; but, if Mr. Douglas is not mistaken, they can be done by the Territorial governments. Is it not every way better to wait until the new inhabitants know themselves and one another; until the policy of the Territory is settled by some experience; and, above all, until the great powers of a sovereign State are regularly conferred upon them and properly limited, so as to prevent the gross abuses which always accompany unrestricted power in human hands?

There is another consideration, which Mr. Douglas should have been the last man to overlook. The present Administration of the Federal Government, and the whole Democratic party throughout the country, including Mr. Douglas, thought that, in the case of Kansas, the question of retaining or abolishing slavery should not be determined by any representative body without giving to the whole mass of the people an opportunity of voting on it. Mr. Douglas carried it further, and warmly opposed the constitution, denying even its validity, because other and undisputed parts of it had not also been submitted to a popular vote. Now he is willing that the whole slavery dispute in any Territory, and all questions that can arise concerning the rights of the people to that or other property, shall be decided at once by a Territorial Legislature, without any submission at all. Popular sovereignty in the last Congress meant the freedom of the people from all the restraints of law and order: now it means a government which shall rule them with a rod of iron. It swings like a pendulum from one side clear over to the other.

Mr. Douglas's opinions on this subject of sovereign Territorial governments are very singular; but the reasons he has produced to support them are infinitely more curious still. For instance, he shows that Jefferson once introduced into the old Congress of the Confederation a *plan* for the government of the Territories, calling them by the name of "New States," but not making them anything like sovereign or independent States; and though this was a mere experimental *projet*, which was rejected by Congress, and never afterwards referred to by Jefferson himself, yet Mr. Douglas argues upon it as if it had somehow become a part of our fundamental law.

Again: He says that the States gave to the Federal Government the same powers which as colonies they had been willing to concede to the British Government, and kept those which as colonies they

had claimed for themselves. If he will read a common-school history of the Revolution, and then look at Art. I, sec. 8, of the Constitution, he will find the two following facts fully established: 1. That the Federal Government has "power to lay and collect taxes, duties, imposts, and excises;" and, 2. That the colonies, before the Revolution, utterly refused to be taxed by Great Britain; and so far from conceding the power, fought against it for seven long years.

There is another thing in the article which, if it had not come from a distinguished Senator, and a very upright gentleman, would have been open to some imputation of unfairness. He quotes the President's message, and begins in the middle of a sentence. He professes to give the very words, and makes Mr. Buchanan say: "That slavery exists in Kansas by virtue of the Constitution of the United States." What Mr. Buchanan did say was a very different thing. It was this: "It has been solemnly adjudged by the highest judicial tribunal known to our laws, that slavery exists in Kansas by virtue of the Constitution of the United States." Everybody knows that by treating the Bible in that way, you can prove the non-existence of God.

The *argumentum ad hominem* is not fair, and we do not mean to use it. Mr. Douglas has a right to change his opinions whenever he pleases. But we quote him as we would any other authority equally high in favor of truth. We can prove by himself that every proposition he lays down in Harpers' Magazine is founded in error. Never before has any public man in America so completely revolutionized his political opinions in the course of eighteen months. We do not deny that the change is heartfelt and conscientious. We only insist that he formerly stated his propositions much more clearly, and sustained them with far greater ability and better reasons, than he does now.

When he took a tour to the South, at the beginning of last winter, he made a speech at New Orleans, in which he announced to the people there that he and his friends in Illinois *accepted the Dred Scott decision*, regarded *slaves* as *property*, and fully admitted the right of a Southern man to go into any *Federal territory* with his slave, and to hold him there *as other property is held.*

In 1849 he voted in the Senate for what was called Walker's amendment, by which it was proposed to put all the internal affairs of California and New Mexico under the domination of the *President*, giving him almost unlimited power, *legislative, judicial, and executive*, over the *internal affairs* of those Territories. (See 20th Cong., p. .) Undoubtedly this was a strange way of treating sovereignties. If Mr. Douglas is right now, he was guilty then of most atrocious usurpation.

Utah is as much a sovereign State as any other Territory, and as perfectly entitled to enjoy the right of self-government. On the 12th of June, 1857, Mr. Douglas made a speech about Utah, at Springfield, Illinois, in which he expressed his opinion strongly in

favor of *the absolute and unconditional repeal* of the organic act, *blotting the Territorial government out of existence*, and putting the people under the sole and exclusive jurisdiction of the United States, *like a fort, arsenal, dock-yard, or magazine.* He does not seem to have had the least idea then that he was proposing to extinguish a sovereignty, or to trample upon the sacred rights of an independent people.

The report which he made to the Senate, in 1856, on the Topeka constitution, enunciates a very different doctrine from that of the magazine article. It is true that the language is a little cloudy, but no one can understand the following sentences to signify that the Territorial governments have sovereign power to take away the property of the inhabitants:

"The sovereignty of a Territory remains in *abeyance, suspended* in the United States, *in trust for the people until they shall be admitted into the Union as a State. In the mean time* they are admitted to enjoy and exercise all the rights and privileges of self-government, *in subordination to the Constitution* of the United States, and IN OBEDIENCE TO THE ORGANIC LAW passed by Congress in pursuance of that instrument. These rights and privileges are *all* derived from the Constitution, *through the act of Congress,* and must be exercised and enjoyed in subjection to all the limitations and restrictions which that Constitution imposes."

The letter he addressed to a Philadelphia meeting, in February, 1858, is more explicit, and, barring some anomalous ideas concerning the *abeyance* of the power and the *suspension* of it *in trust*, it is clear enough:

"Under our Territorial system, it requires sovereign power to ordain and establish constitutions and governments. While a Territory may and should enjoy all the rights of self-government, *in obedience to its organic law*, it is NOT A SOVEREIGN POWER. The *sovereignty* of a Territory *remains in abeyance, suspended* in the United States, *in trust for the people when they become a State,* and *cannot be withdrawn from the hands of the trustee and vested in the people of a Territory without the consent of Congress.*"

The report which he made in the same month, from the Senate Committee on Territories, is equally distinct, and rather more emphatic against his new doctrine:

"This committee in their reports have always held that *a Territory is not a sovereign power;* that the sovereignty of a Territory is in abeyance, suspended in the United States, in trust for the people when they become a State; that the United States, as trustees, cannot be divested of the sovereignty, nor the Territory be invested with the right to assume and exercise it, without the consent of Congress. If the proposition be true that sovereign power alone can *institute governments*, and that the sovereignty of a Territory is in abeyance, suspended in the United States, in trust for the people when they become a State, and that the sovereignty cannot be divested from the hands of the trustee without the assent of Congress, it follows, as an inevitable consequence, that the Kansas Legislature did not and could not confer upon the Lecompton convention the sovereign power of ordaining a constitution for the people of Kansas, in place of the organic act passed by Congress."

The days are past and gone when Mr. Douglas led the fiery assaults of the opposition in the Lecompton controversy. Then it was his object to prove that a Territorial Legislature, so far from being omnipotent, was powerless even to authorize an election of delegates to consider about their own affairs. It was asserted that a convention chosen under a Territorial law could make and ordain no constitution which would be legally binding.

Then a Territorial government was to be despised and spit upon, even when it invited the people to come forward and vote on a question of the most vital importance to their own interests. But now all things have become new. The Lecompton dispute has "gone glimmering down the dream of things that were," and Mr. Douglas produces another issue, brand new from the mint. The old opinions are not worth a rush to his present position: it must be sustained by opposite principles and reasoning totally different. The Legislature of Kansas was not sovereign when it authorized a convention of the people to assemble and decide what sort of a constitution they would have, but when it strikes at their rights of property, it becomes not only a sovereign, but a sovereign without limitation of power. We have no idea that Mr. Douglas is not perfectly sincere, as he was also when he took the other side. The impulses engendered by the heat of controversy have driven him at different times in opposite directions. We do not charge it against him as a crime, but it is true that these views of his, inconsistent as they are with one another, always *happen* to accord with the interests of the opposition, always give to the enemies of the Constitution a certain amount of "aid and comfort," and always add a little to the rancorous and malignant hatred with which the Abolitionists regard the Government of their own country.

Yes; the Lecompton issue which Mr. Douglas made upon the Administration two years ago is done, and the principles on which we were then opposed are abandoned. We are no longer required to fight for the lawfulness of a Territorial election held under Territorial authority. But another issue is thrust upon us, to "disturb the harmony and threaten the integrity" of the party. A few words more, (perhaps of tedious repetition,) by way of showing what that new issue is, or probably will be, and we are done.

We insist that an emigrant going into a Federal Territory, retains his title to the property which he took with him, until there is some prohibition enacted by lawful authority. Mr. Douglas cannot deny this in the face of his New Orleans speech, and the overwhelming reasons which support it.

It is an agreed point among all Democrats that Congress cannot interfere with the rights of property in the Territories.

It is also acknowledged that the people of a new State, either in their constitution or in an act of their Legislature, may make the negroes within it free, or hold them in a state of servitude.

But we believe more. We believe in submitting to the law, as decided by the Supreme Court, which declares that a Territorial Legislature cannot, any more than Congress, interfere with rights of property in a Territory—that the settlers of a Territory are bound to wait until the sovereign power is conferred upon them, with proper limitations, before they attempt to exercise the most dangerous of all its functions. Mr. Douglas denies this, and there is the new issue.

Why should such an issue be made at such a time? What is there now to excuse any friend of peace for attempting to stir up the bitter waters of strife? There is no actual difficulty about this subject in any Territory. There is no question upon it pending before Congress or the country. We are called upon to make a contest, at once unnecessary and hopeless, with the judicial authority of the nation. We object to it. We will not obey Mr. Douglas when he commands us to assault the Supreme Court of the United States. We believe the court to be right, and Mr. Douglas wrong.

From Harper's Monthly

THE DIVIDING LINE BETWEEN FEDERAL AND LOCAL AUTHORITY.

POPULAR SOVEREIGNTY IN THE TERRITORIES.

BY STEPHEN A. DOUGLAS.

UNDER our complex system of government it is the first duty of American statesmen to mark distinctly the dividing line between Federal and Local Authority. To do this with accuracy involves an inquiry, not only into the powers and duties of the Federal Government under the Constitution, but also into the rights, privileges, and immunities of the people of the Territories, as well as of the States composing the Union. The relative powers and functions of the Federal and State governments have become well understood and clearly defined by their practical operation and harmonious action for a long series of years; while the disputed question—involving the right of the people of the Territories to govern themselves in respect to their local affairs and internal polity—remains a fruitful source of partisan strife and sectional controversy. The political organization which was formed in 1854, and has assumed the name of the Republican Party, is based on the theory that African slavery, as it exists in this country, is an evil of such magnitude—social, moral, and political—as to justify and require the exertion of the entire power and influence of the Federal Government to the full extent that the Constitution, according to their interpretation, will permit for its ultimate extinction. In the platform of principles adopted at Philadelphia by the Republican National Convention in 1856, it is affirmed:

"That the Constitution confers upon Congress sovereign power over the Territories of the United States for their government, and that in the exercise of this power it is both the right and the duty of Congress to prohibit in the Territories those twin relics of barbarism, polygamy and slavery."

According to the theory of the Republican party there is an irrepressible conflict between freedom and slavery, free labor and slave labor, free States and slave States, which is irreconcilable, and must continue to rage with increasing fury until the one shall become universal by the annihilation of the other. In the language of the most eminent and authoritative expounder of their political faith,

"It is an irrepressible conflict between opposing and enduring forces; and it means that the United States must and will, sooner or later, become either entirely a slaveholding nation or entirely a free labor nation. Either the cotton and rice fields of South Carolina, and the sugar plantations of Louisiana, will ultimately be tilled by free labor, and Charleston and New Orleans become marts for legitimate merchandise alone, or else the rye fields and wheat fields of Massachusetts and New York must again be surrendered by their farmers to slave culture and to the production of slaves, and Boston and New York become once more markets for trade in the bodies and souls of men."

In the Illinois canvass of 1858 the same proposition was advocated and defended by the distinguished Republican standard-bearer in these words:

"In my opinion it [the slavery agitation] will not cease until a crisis shall have been reached and passed. 'A house divided against itself can not stand.' I believe this government can not endure permanently half slave and half free. I do not expect the house to fall, but I do expect it will cease to be divided. It will become all one thing or all the other. Either the opponents of slavery will arrest the further spread of it, and place it where the public mind shall rest in the belief that it is in the course of ultimate extinction, or its advocates will push forward till it shall become alike lawful in all the States—old as well as new, North as well as South."

Thus it will be seen, that under the auspices of a political party, which claims sovereignty in Congress over the subject of slavery, there can be no peace on the slavery question—no truce in the sectional strife—no fraternity between the North and South, so long as this Union remains as our fathers made it—divided into free and slave States, with the right on the part of each to retain slavery so long as it chooses, and to abolish it whenever it pleases.

On the other hand, it would be uncandid to deny that, while the Democratic party is a unit in its irreconcilable opposition to the doctrines and principles of the Republican party, there are radical differences of opinion in respect to the powers and duties of Congress, and the rights and immunities of the people of the Territories under the Federal Constitution, which seriously disturb its harmony and threaten its integrity. These differences of opinion arise from the different interpretations placed on the Constitution by persons who belong to one of the following classes:

First.—Those who believe that the Constitution of the United States neither establishes nor prohibits slavery in the States or Territories beyond the power of the people legally to control it, but "leaves the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States."

Second.—Those who believe that the Constitution establishes slavery in the Territories, and withholds from Congress and the Territorial Legislature the power to control it; and who insist that, in the event the Territorial Legislature fails to enact the requisite laws for its protection, it becomes the imperative duty of Congress to interpose its authority and furnish such protection.

Third.—Those who, while professing to believe that the Constitution establishes slavery in the Territories beyond the power of Congress or the Territorial Legislature to control it, at the

same time protest against the duty of Congress to interfere for its protection; but insist that it is the duty of the Judiciary to protect and maintain slavery in the Territories without any law upon the subject.

By a careful examination of the second and third propositions, it will be seen that the advocates of each agree on the theoretical question, that the Constitution establishes slavery in the Territories, and compels them to have it whether they want it or not; and differ on the practical point, whether a right secured by the Constitution shall be protected by an act of Congress when all other remedies fail. The reason assigned for not protecting by law a right secured by the Constitution is, that it is the duty of the Courts to protect slavery in the Territories without any legislation upon the subject. How the Courts are to afford protection to slaves or any other property, where there is no law providing remedies and imposing penalties and conferring jurisdiction upon the Courts to hear and determine the cases as they arise, remains to be explained.

The acts of Congress, establishing the several Territories of the United States, provide that: "The jurisdiction of the several Courts herein provided for, both appellate and original, and that of the Probate Courts and Justices of the Peace, shall be as limited by law"—meaning such laws as the Territorial Legislatures shall from time to time enact. It will be seen that the judicial tribunals of the Territories have just such jurisdiction, and only such, in respect to the rights of persons and property pertaining to the citizens of the Territory as the Territorial Legislature shall see fit to confer; and consequently, that the Courts can afford protection to persons and property no further than the Legislature shall, by law, confer the jurisdiction, and prescribe the remedies, penalties, and modes of proceeding.

It is difficult to conceive how any person who believes that the Constitution confers the right of protection in the enjoyment of slave property in the Territories, regardless of the wishes of the people and of the action of the Territorial Legislature, can satisfy his conscience and his oath of fidelity to the Constitution in withholding such Congressional legislation as may be essential to the enjoyment of such right under the Constitution. Under this view of the subject it is impossible to resist the conclusion that, if the Constitution does establish slavery in the Territories, beyond the power of the people to control it by law, it is the imperative duty of Congress to supply all the legislation necessary to its protection; and if this proposition is not true, it necessarily results that the Constitution neither establishes nor prohibits slavery any where, but leaves the people of each State and Territory entirely free to form and regulate their domestic affairs to suit themselves, without the intervention of Congress or of any other power whatsoever.

But it is urged with great plausibility by those who have entire faith in the soundness of the proposition, that "a Territory is the mere creature of Congress; that the creature can not be clothed with any powers not possessed by the creator; and that Congress, not possessing the power to legislate in respect to African slavery in the Territories, can not delegate to a Territorial Legislature any power which it does not itself possess."

This proposition is as plausible as it is fallacious. But the reverse of it is true as a general rule. Congress can not delegate to a Territorial Legislature, or to any other body of men whatsoever, any power which the Constitution has vested in Congress. In other words: *Every vower conferred on Congress by the Constitution must be exercised by Congress in the mode prescribed in the Constitution.*

Let us test the correctness of this proposition by reference to the powers of Congress as defined in the Constitution:

"The Congress shall have power—

"To lay and collect taxes, duties, imposts, and excises," etc.;

"To borrow money on the credit of the United States;"

"To regulate commerce with foreign nations," etc.;

"To establish a uniform rule of naturalization," etc.;

"To coin money, and regulate the value thereof;"

"To establish post-offices and post-roads;"

"To constitute tribunals inferior to the Supreme Court;"

"To declare war," etc.

"To provide and maintain a navy."

This list might be extended so as to embrace all the powers conferred on Congress by the Constitution; but enough has been cited to test the principle. Will it be contended that Congress can delegate any one of these powers to a Territorial Legislature or to any tribunal whatever? Can Congress delegate to Kansas the power to "regulate commerce," or to Nebraska the power "to establish uniform rules of naturalization," or to Illinois the power "to coin money and regulate the value thereof," or to Virginia the power "to establish post-offices and post-roads?"

The mere statement of the question carries with it the emphatic answer, that Congress can not delegate any power which it does possess; but that every power conferred on Congress by the Constitution must be exercised by Congress in the manner prescribed in that instrument.

On the other hand, there are cases in which Congress may establish tribunals and local governments, and invest them with powers which Congress does not possess and can not exercise under the Constitution. For instance, Congress may establish courts inferior to the Supreme Court, and confer upon them the power to hear and determine cases, and render judgments affecting the life, liberty, and property of the citizen, without itself having the power to hear and determine such causes, render judgments, or revise or annul the same. In like manner Con-

gress may institute governments for the Territories, composed of an executive, judicial, and legislative department; and may confer upon the Governor all the executive powers and functions of the Territory, without having the right to exercise any one of those powers or functions itself.

Congress may confer upon the judicial department all the judicial powers and functions of the Territory, without having the right to hear and determine a cause, or render a judgment, or to revise or annul any decision made by the courts so established by Congress. Congress may also confer upon the legislative department of the Territory certain legislative powers which it can not itself exercise, and only such as Congress can not exercise under the Constitution. The powers which Congress may thus *confer* but can not *exercise*, are such as relate to the domestic affairs and internal polity of the Territory, and do not affect the general welfare of the Republic.

This dividing line between Federal and Local authority was familiar to the framers of the Constitution. It is clearly defined and distinctly marked on every page of history which records the great events of that immortal struggle between the American Colonies and the British Government, which resulted in the establishment of our national independence. In the beginning of that struggle the Colonies neither contemplated nor desired independence. In all their addresses to the Crown, and to the Parliament, and to the people of Great Britain, as well as to the people of America, they averred that as loyal British subjects they deplored the causes which impelled their separation from the parent country. They were strongly and affectionately attached to the Constitution, civil and political institutions and jurisprudence of Great Britain, which they proudly claimed as the birth-right of all Englishmen, and desired to transmit them unimpaired as a precious legacy to their posterity. For a long series of years they remonstrated against the violation of their inalienable rights of self-government under the British Constitution, and humbly petitioned for the redress of their grievances.

They acknowledged and affirmed their allegiance to the Crown, their affection for the people, and their devotion to the Constitution of Great Britain; and their only complaint was that they were not permitted to enjoy the rights and privileges of self-government, in the management of their internal affairs and domestic concerns, in accordance with the guaranties of that Constitution and of the colonial charters granted by the Crown in pursuance of it. They conceded the right of the Imperial government to make all laws and perform all acts concerning the colonies, which were in their nature *Imperial* and not *Colonial*—which affected the general welfare of the Empire, and did not interfere with the "internal polity" of the Colonies. They recognized the right of the Imperial government to declare war and make peace; to coin money and determine its value; to make treaties and conduct intercourse with foreign nations; to regulate commerce between the several colonies, and between each colony and the parent country, and with foreign countries; and in general they recognized the right of the Imperial government of Great Britain to exercise all the powers and authority which, under our Federal Constitution, are delegated by the people of the several States to the Government of the United States.

Recognizing and conceding to the Imperial government all these powers—*including the right to institute governments for the colonies*, by granting charters under which the inhabitants residing within the limits of any specified Territory might be organized into a political community, with a government consisting of its appropriate departments, executive, legislative, and judicial; conceding all these powers, the colonies emphatically denied that the Imperial government had any rightful authority to impose taxes upon them without their consent, or to interfere with their internal polity; claiming that it was the birth-right of all Englishmen—inalienable when formed into a political community—to exercise and enjoy all the rights, privileges, and immunities of self-government in respect to all matters and things, which were Local and not General—Internal and not External—Colonial and not Imperial—as fully as if they were inhabitants of England, with a fair representation in Parliament.

Thus it appears that our fathers of the Revolution were contending, not for Independence in the first instance, but for the inestimable right of Local Self-Government under the British Constitution; the right of every distinct political community—dependent Colonies, Territories, and Provinces, as well as sovereign States—to make their own local laws, form their own domestic institutions, and manage their own internal affairs in their own way, subject only to the Constitution of Great Britain as the paramount law of the Empire.

The government of Great Britain had violated this inalienable right of local self-government by a long series of acts on a great variety of subjects. The first serious point of controversy arose on the slavery question as early as 1699, which continued a fruitful source of irritation until the Revolution, and formed one of the causes for the separation of the colonies from the British Crown.

For more than forty years the Provincial Legislature of Virginia had passed laws for the protection and encouragement of African slavery within her limits. This policy was steadily pursued until the white inhabitants of Virginia became alarmed for their own safety, in view of the numerous and formidable tribes of Indian savages which surrounded and threatened the feeble white settlements, while ship-loads of African savages were being daily landed in their midst. In order to check and restrain a policy which seemed to threaten the very existence of the colony, the Provincial Legislature enacted a

law imposing a tax upon every slave who should be brought into Virginia. The British merchants, who were engaged in the African slave-trade, regarding this legislation as injurious to their interests and in violation of their rights, petitioned the King of England and his Majesty's ministers to annul the obnoxious law and protect them in their right to carry their slaves into Virginia and all other British colonies which were the common property of the Empire—acquired by the common blood and common treasure—and from which a few adventurers who had settled on the Imperial domain by his Majesty's sufferance, had no right to exclude them or discriminate against their property by a mere Provincial enactment. Upon a full consideration of the subject the King graciously granted the prayer of the petitioners; and accordingly issued peremptory orders to the Royal Governor of Virginia, and to the Governors of all the other British colonies in America, forbidding them to sign or approve any Colonial or Provincial enactment injurious to the African Slave-Trade, unless such enactment should contain a clause suspending its operation until his Majesty's pleasure should be made known in the premises.

Judge Tucker, in his Appendix to Blackstone, refers to thirty-one acts of the Provincial Legislature of Virginia, passed at various periods from 1662 to 1772, upon the subject of African slavery, showing conclusively that Virginia always considered this as one of the questions affecting her "internal polity," over which she, in common with the other colonies, claimed "the right of exclusive legislation in their Provincial Legislatures" within their respective limits. Some of these acts, particularly those which were enacted prior to the year 1699, were evidently intended to foster and encourage, as well as to regulate and control African slavery, as one of the domestic institutions of the colony. The act of 1699, and most of the enactments subsequent to that date, were as obviously designed to restrain and check the growth of the institution with the view of confining it within the limit of the actual necessities of the community, or its ultimate extinction, as might be deemed most conducive to the public interests, by a system of unfriendly legislation, such as imposing a tax on all slaves introduced into the colony, which was increased and renewed from time to time, as occasion required, until the period of the Revolution. Many of these acts never took effect, in consequence of the King withholding his assent, even after the Governor had approved the enactment, in cases where it contained a clause suspending its operation until his Majesty's pleasure should be made known in the premises.

In 1772 the Provincial Legislature of Virginia, after imposing another tax of five per cent. on all slaves imported into the colony, petitioned the King to remove all those restraints which inhibited his Majesty's Governors assenting to such laws as might check so very pernicious a commerce as slavery. Of this petition Judge Tucker says:

"The following extract from a petition to the Throne, presented from the House of Burgesses of Virginia, April 1st, 1772, will show the sense of the people of Virginia on the subject of slavery at that period:

"'The importation of slaves into the colony from the coast of Africa hath long been considered as a trade of great inhumanity; and under its present encouragement we have too much reason to fear will endanger the very existence of your Majesty's American dominions.'"

Mark the ominous words! Virginia tells the King of England in 1772, four years prior to the Declaration of Independence, that his Majesty's American dominions are in danger: Not because of the Stamp duties—not because of the tax on Tea—not because of his attempts to collect revenue in America! These have since been deemed sufficient to justify rebellion and revolution. But none of these are referred to by Virginia in her address to the Throne—there being another wrong which, in magnitude and enormity, so far exceeded these and all other causes of complaint that the very existence of his Majesty's American dominions depended upon it! That wrong consisted in forcing African slavery upon a dependent colony without her consent, and in opposition to the wishes of her own people!

The people of Virginia at that day did not appreciate the force of the argument used by the British merchants, who were engaged in the African slave-trade, and which was afterward indorsed, at least by implication, by the King and his Ministers; that the colonies were the common property of the Empire—acquired by the common blood and treasure—and therefore all British subjects had the right to carry their slaves into the colonies and hold them in defiance of the local law and in contempt of the wishes and safety of the colonies.

The people of Virginia not being convinced by this process of reasoning, still adhered to the doctrine which they held in common with their sister colonies, that it was the birth-right of all freemen—inalienable when formed into political communities—to exercise exclusive legislation in respect to all matters pertaining to their internal polity—slavery not excepted; and rather than surrender this great right they were prepared to withdraw their allegiance from the Crown.

Again referring to this petition to the King, the same learned Judge adds:

"This petition produced no effect, as appears from the first clause of our [Virginia] Constitution, where, among other acts of misrule, the inhuman use of the Royal negative in refusing us [the people of Virginia] permission to exclude slavery from us by law, is enumerated among the reasons for separating from Great Britain."

This clause in the Constitution of Virginia, referring to the inhuman use of the Royal negative, in refusing the Colony of Virginia permission to exclude slavery from her limits by law as one of the reasons for separating from Great Britain, was adopted on the 12th day of June,

1776, three weeks and one day previous to the Declaration of Independence by the Continental Congress; and after remaining in force as a part of the Constitution for a period of fifty-four years, was re-adopted, without alteration, by the Convention which framed the new Constitution in 1830, and then ratified by the people as a part of the new Constitution; and was again re-adopted by the Convention which amended the Constitution in 1850, and again ratified by the people as a part of the amended Constitution, and at this day remains a portion of the fundamental law of Virginia—proclaiming to the world and to posterity that one of the reasons for separating from Great Britain was "the inhuman use of the Royal negative in refusing us [the Colony of Virginia] permission to exclude slavery from us by law!"

The legislation of Virginia on this subject may be taken as a fair sample of the legislative enactments of each of the thirteen Colonies, showing conclusively that slavery was regarded by them all as a domestic question to be regulated and determined by each Colony to suit itself, without the intervention of the British Parliament or "the inhuman use of the Royal negative." Each Colony passed a series of enactments, beginning at an early period of its history and running down to the commencement of the Revolution, either protecting, regulating, or restraining African Slavery within its respective limits and in accordance with their wishes and supposed interests. North and South Carolina, following the example of Virginia, at first encouraged the introduction of slaves, until the number increased beyond their wants and necessities, when they attempted to check and restrain the further growth of the institution, by imposing a high rate of taxation upon all slaves which should be brought into those Colonies; and finally, in 1764, South Carolina passed a law imposing a penalty of one hundred pounds (or five hundred dollars) for every negro slave subsequently introduced into that Colony.

The Colony of Georgia was originally founded on strict anti-slavery principles, and rigidly maintained this policy for a series of years, until the inhabitants became convinced by experience, that, with their climate and productions, slave labor, if not essential to their existence, would prove beneficial and useful to their material interests. Maryland and Delaware protected and regulated African Slavery as one of their domestic institutions. Pennsylvania, under the advice of William Penn, substituted fourteen years' service and perpetual adscript to the soil for hereditary slavery, and attempted to legislate, not for the total abolition of slavery, but for the sanctity of marriage among slaves, and for their personal security. New Jersey, New York, and Connecticut, recognized African Slavery as a domestic institution lawfully existing within their respective limits, and passed the requisite laws for its control and regulation.

Rhode Island provided by law that no slave should serve more than ten years, at the end of which time he was to be set free; and if the master should refuse to let him go free, or sold him elsewhere for a longer period of service, he was subject to a penalty of forty pounds, which was supposed at that period to be nearly double the value of the slave.

Massachusetts imposed heavy taxes upon all slaves brought into the Colony, and provided in some instances for sending the slaves back to their native land; and finally prohibited the introduction of any more slaves into the Colony under any circumstances.

When New Hampshire passed laws which were designed to prevent the introduction of any more slaves, the British Cabinet issued the following order to Governor Wentworth: "You are not to give your assent to, or pass any law imposing duties upon Negroes imported into New Hampshire."

While the legislation of the several Colonies exhibits dissimilarity of views, founded on a diversity of interests, on the merits and policy of slavery, it shows conclusively that they all regarded it as a domestic question affecting their internal polity in respect to which they were entitled to a full and exclusive power of legislation in the several provincial Legislatures. For a few years immediately preceding the American Revolution the African Slave-Trade was encouraged and stimulated by the British Government and carried on with more vigor by the English merchants than at any other period in the history of the Colonies; and this fact, taken in connection with the extraordinary claim asserted in the Memorable Preamble to the act repealing the Stamp duties, that "Parliament possessed the right to bind the Colonies in all cases whatsoever," not only in respect to all matters affecting the general welfare of the empire, but also in regard to the domestic relations and internal polity of the Colonies—produced a powerful impression upon the minds of the colonists, and imparted peculiar prominence to the principle involved in the controversy.

Hence the enactments by the several colonial Legislatures calculated and designed to restrain and prevent the increase of slaves; and, on the other hand, the orders issued by the Crown instructing the Colonial Governors not to sign or permit any legislative enactment prejudicial or injurious to the African Slave-Trade, unless such enactment should contain a clause suspending its operation until the royal pleasure should be made known in the premises; or, in other words, until the King should have an opportunity of annulling the acts of the colonial Legislatures by the "inhuman use of the Royal negative."

Thus the policy of the Colonies on the slavery question had assumed a direct antagonism to that of the British Government; and this antagonism not only added to the importance of the principle of local self-government in the Colonies, but produced a general concurrence of opinion and action in respect to the question of slavery in the proceedings of the Continental Congress, which assembled at Philadelphia for the first time on the 5th of September, 1774.

On the 14th of October the Congress adopted a Bill of Rights for the Colonies, in the form of a series of resolutions, in which, after conceding to the British Government the power to regulate commerce and do such other things as affected the general welfare of the empire without interfering with the internal polity of the Colonies, they declared "That they are entitled to a free and exclusive power in their several provincial Legislatures, where their right of representation can alone be preserved, in all cases of taxation and internal polity." Having thus defined the principle for which they were contending, the Congress proceeded to adopt the following "Peaceful Measures," which they still hoped would be sufficient to induce compliance with their just and reasonable demands. These "Peaceful Measures" consisted of addresses to the King, to the Parliament, and to the people of Great Britain, together with an Association of Non-Intercourse to be observed and maintained so long as their grievances should remain unredressed.

The second article of this Association, which was adopted without opposition and signed by the Delegates from all the Colonies, was in these words:

"That we will neither import nor purchase any slave imported after the first day of December next; after which time we will wholly discontinue the Slave-Trade, and will neither be concerned in it ourselves, nor will we hire our vessels, nor sell our commodities or manufactures to those who are engaged in it."

This Bill of Rights, together with these articles of association, were subsequently submitted to and adopted by each of the thirteen Colonies in their respective Provincial Legislatures.

Thus was distinctly formed between the Colonies and the parent country that issue upon which the Declaration of Independence was founded and the battles of the Revolution were fought. It involved the specific claim on the part of the Colonies—denied by the King and Parliament—to the exclusive right of legislation touching all local and internal concerns, *slavery included.* This being the principle involved in the contest, a majority of the Colonies refused to permit their Delegates to sign the Declaration of Independence except upon the distinct condition and express reservation to each Colony of the exclusive right to manage and control its local concerns and police regulations without the intervention of any general Congress which might be established for the United Colonies.

Let us cite one of these reservations as a specimen of all, showing conclusively that they were fighting for the inalienable right of local self-government, with the clear understanding that when they had succeeded in throwing off the despotism of the British Parliament, no Congressional despotism was to be substituted for it:

"We, the Delegates of Maryland, in convention assembled, do declare that the King of Great Britain has violated his compact with this people, and that they owe no allegiance to him. We have therefore thought it just and necessary to empower our Deputies in Congress to join with a majority of the United Colonies in declaring them free and independent States, in framing such further confederation between them, in making foreign alliances, and in adopting such other measures as shall be judged necessary for the preservation of their liberties:

"*Provided*, the sole and exclusive right of regulating the internal polity and government of this Colony be reserved to the people thereof.

"We have also thought proper to call a new convention for the purpose of establishing a government in this Colony.

"No ambitious views, no desire of independence, induced the people of Maryland to form an union with the other Colonies. To procure an exemption from Parliamentary taxation, and to continue to the Legislatures of these Colonies the sole and exclusive right of regulating their Internal Polity, was our original and only motive. To maintain inviolate our liberties, and to transmit them unimpaired to posterity, was our duty and first wish; our next, to continue connected with and dependent on Great Britain. For the truth of these assertions we appeal to that Almighty Being who is emphatically styled the Searcher of hearts, and from whose omniscience none is concealed. Relying on his Divine protection and assistance, and trusting to the justice of our cause, we exhort and conjure every virtuous citizen to join cordially in defense of our common rights, and in maintenance of the freedom of this and her sister Colonies."

The first Plan of Federal Government adopted for the United States was formed during the Revolution, and is usually known as "The Articles of Confederation." By these Articles it was provided that "Each State retains its Sovereignty, Freedom, and Independence, and every power, jurisdiction, and right which is not by this Confederation expressly delegated to the United States in Congress assembled."

At the time the Articles of Confederation were adopted—July 9, 1778—the United States held no lands or territory in common. The entire country—including all the waste and unappropriated lands—embraced within or pertaining to the Confederacy, belonged to and was the property of the several States within whose limits the same was situated.

On the 6th day of September, 1780, Congress "recommended to the several States in the Union having claims to waste and unappropriated lands in the Western country, a liberal cession to the United States of a portion of their respective claims for the common benefit of the Union."

On the 20th day of October, 1783, the Legislature of Virginia passed an act authorizing the Delegates in Congress from that State to convey to the United States "the territory or tract of country within the limits of the Virginia Charter, lying and bearing to the Northwest of the River Ohio"—which grant was to be made upon the "condition that the territory so ceded shall be laid out and formed into States;" and that "the States so formed shall be distinct republican States, and admitted members of the Federal Union, having the same rights of Sovereignty, Freedom, and Independence as the other States."

On the 1st day of March, 1784, Thomas Jefferson and his colleagues in Congress executed the deed of cession in pursuance of the act of the Virginia Legislature, which was accepted and ordered to "be recorded and enrolled among the acts of the United States in Congress assembled." This was the first territory ever acquired, held, or owned by the United States. On the same day of the deed of cession Mr. Jefferson, as chairman of a committee which had been appointed, consisting of Mr. Jefferson of Virginia, Mr. Chase of Maryland, and Mr. Howell of Rhode Island, submitted to Congress "a plan for the temporary government of the territory ceded or to be ceded by the individual States to the United States."

It is important that this Jeffersonian Plan of government for the Territories should be carefully considered for many obvious reasons. It was the first plan of government for the Territories ever adopted in the United States. It was drawn by the author of the Declaration of Independence, and revised and adopted by those who shaped the issues which produced the Revolution, and formed the foundations upon which our whole American system of governments rests. It was not intended to be either local or temporary in its character, but was designed to apply to all "territory ceded or to be ceded," and to be universal in its application and eternal in its duration, wherever and whenever we might have territory requiring a government. It ignored the right of Congress to legislate for the people of the Territories without their consent, and recognized the inalienable right of the people of the Territories, when organized into political communities, to govern themselves in respect to their local concerns and internal polity. It was adopted by the Congress of the Confederation on the 23d day of April, 1784, and stood upon the Statute Book as a general and permanent plan for the government of all territory which we then owned or should subsequently acquire, with a provision declaring it to be a "Charter of Compact," and that its provisions should "stand as fundamental conditions between the thirteen original States and those newly described, unalterable but by the joint consent of the United States in Congress assembled, and of the particular State within which such alteration is proposed to be made." Thus this Jeffersonian Plan for the government of the Territories—this "Charter of Compact"—"these fundamental conditions," which were declared to be "unalterable" without the consent of the people of "the particular State [territory] within which such alteration is proposed to be made," stood on the Statute Book when the Convention assembled at Philadelphia in 1787 and proceeded to form the Constitution of the United States.

Now let us examine the main provisions of the Jeffersonian Plan:

First.—"That the territory ceded or to be ceded by the individual States to the United States, whenever the same shall have been purchased of the Indian inhabitants and offered for sale by the United States, shall be formed into *additional States*," etc., etc.

The Plan proceeds to designate the boundaries and territorial extent of the proposed "additional States," and then provides:

Second.—"That the settlers within the territory so to be purchased and offered for sale shall, either on their own petition or on the order of Congress, receive authority from them, with appointments of time and place, for their free males of full age to meet together for the purpose of establishing a temporary government to adopt the Constitution and laws of any one of these States [the original States], so that such laws nevertheless shall be subject to alteration by their ordinary legislature; and to erect, subject to like alteration, counties or townships for the election of members for their Legislature."

Having thus provided a mode by which the first inhabitants or settlers of the territory may assemble together and choose for themselves the Constitution and laws of some one of the original thirteen States, and declare the same in force for the government of their territory temporarily, with the right on the part of the people to change the same, through their local Legislature, as they may see proper, the Plan then proceeds to point out the mode in which they may establish for themselves "a permanent Constitution and government," whenever they shall have twenty thousand inhabitants, as follows:

Third.—"That such temporary government only shall continue in force in any *State* until it shall have acquired twenty thousand free inhabitants, when, giving due proof thereof to Congress, they shall receive from them authority, with appointments of time and place, to call a Convention of Representatives to establish a permanent Constitution and government for themselves."

Having thus provided for the first settlers "a temporary government" in these "additional States," and for "a permanent Constitution and government" when they shall have acquired twenty thousand inhabitants, the Plan contemplates that they shall continue to govern themselves *as States*, having, as provided in the Virginia deed of cession, "the same rights of sovereignty, freedom, and independence," in respect to their domestic affairs and internal polity, "as the other States," until they shall have a population equal to the least numerous of the original thirteen States; and in the mean time shall keep a sitting member in Congress, with a right of debating but not of voting, when they shall be admitted into the Union on an equal footing with the other States, as follows:

Fourth.—"That whenever any of the said States shall have of free inhabitants as many as shall then be in any one of the least numerous of the thirteen original States, such *State* shall be admitted by its delegates into the Congress of the United States on an equal footing with the said original States." . . .

And—

"Until such admission by their delegates into Congress any of the said *States*, after the establishment of their temporary government, shall have au-

thority to keep a sitting member in Congress, with the right of debating, but not of voting."

Attached to the provision which appears in this paper under the "third" head is a proviso, containing five propositions, which, when agreed to and accepted by the people of said additional States, were to "be formed into a charter of compact," and to remain forever "unalterable," except by the consent of such States as well as of the United States—to wit:

"*Provided* that both the temporary and permanent governments be established on these principles as their basis:"

1*st*.—"That they shall forever remain a part of the United States of America."

2*d*.—"That in their persons, property, and territory they shall be subject to the government of the United States in Congress assembled, and to the Articles of Confederation in all those cases in which the original States shall be so subject."

3*d*.—"That they shall be subject to pay a part of the federal debts contracted, or to be contracted—to be apportioned on them by Congress according to the same common rule and measure by which apportionments thereof shall be made on the other States."

4*th*.—"That their respective governments shall be in republican form, and shall admit no person to be a citizen who holds any hereditary title."

The fifth article, which relates to the prohibition of slavery after the year 1800, having been rejected by Congress, never became a part of the Jeffersonian Plan of Government for the Territories, as adopted April 23, 1784.

The concluding paragraph of this Plan of Government, which emphatically ignores the right of Congress to bind the people of the Territories without their consent, and recognizes the people therein as the true source of all legitimate power in respect to their internal polity, is in these words:

"That all the preceding articles shall be formed into a *charter of compact*, shall be duly executed by the President of the United States, in Congress assembled, under his hand and the seal of the United States, shall be promulgated, and shall stand as fundamental conditions between the thirteen original States and those newly described, unalterable but by the joint consent of the United States in Congress assembled, and of the particular State within which such alteration is proposed to be made."

This Jeffersonian Plan of Government embodies and carries out the ideas and principles of the fathers of the Revolution—that the people of every separate political community (dependent colonies, Provinces, and Territories as well as sovereign States) have an inalienable right to govern themselves in respect to their internal polity, and repudiates the dogma of the British Ministry and the Tories of that day that all colonies, Provinces, and Territories were the property of the Empire, acquired with the common blood and common treasure, and that the inhabitants thereof have no rights, privileges, or immunities except such as the Imperial government should graciously condescend to bestow upon them. This Plan recognizes by law and irrevocable "compact" the existence of two distinct classes of States under our American system of government—the one being members of the Union, and consisting of the original thirteen and such other States, having the requisite population, as Congress should admit into the Federal Union, with an equal vote in the management of Federal affairs as well as the exclusive power in regard to their internal polity respectively—the other, not having the requisite population for admission into the Union, could have no vote or agency in the control of the Federal relations, but possessed the same exclusive power over their domestic affairs and internal policy respectively as the original States, with the right, while they have less than twenty thousand inhabitants, to choose for their government the Constitution and laws of any one of the original States; and when they should have more than twenty thousand, but less than the number required to entitle them to admission into the Union, they were authorized to form for themselves "a permanent Constitution and government;" and in either case they were entitled to keep a delegate in Congress with the right of debating, but not of voting. This "Charter of Compact," with its "fundamental conditions," which were declared to be "unalterable" without "the joint consent" of the people interested in them, as well as of the United States, thus stood on the statute book unrepealed and irrepealable—furnishing a complete system of government for all "the territory ceded or to be ceded" to the United States, without any other legislation upon the subject, when, on the 14th day of May, 1787, the Federal Convention assembled at Philadelphia and proceeded to form the Constitution under which we now live. Thus it will be seen that the dividing line between Federal and Local authority, in respect to the rights of those political communities which, for the sake of convenience and in contradistinction to the States represented in Congress, we now call Territories, but which were then known as "*States*," or "*new States*," was so distinctly marked at that day that no intelligent man could fail to perceive it.

It is true that the government of the Confederation had proved totally inadequate to the fulfillment of the ends for which it was devised; not because of the relations between the Territories, or new States, and the United States, but in consequence of having no power to enforce its decrees on the Federal questions which were clearly within the scope of its expressly delegated powers. The radical defects in the Articles of Confederation were found to consist in the fact that it was a mere league between sovereign States, and not a Federal Government with its appropriate departments — Executive, Legislative, and Judicial—each clothed with authority to perform and carry into effect its own peculiar functions. The Confederation having no power to enforce compliance with its resolves, "the consequence was, that though in theory the Resolutions of Congress were equivalent to laws, yet in practice they were found to be mere rec-

ommendations, which the States, like other sovereignties, observed or disregarded according to their own good-will and gracious pleasure." Congress could not impose duties, collect taxes, raise armies, or do any other act essential to the existence of government, without the voluntary consent and co-operation of each of the States. Congress could resolve, but could not carry its resolutions into effect—could recommend to the States to provide a revenue for the necessities of the Federal government, but could not use the means necessary to the collection of the revenue when the States failed to comply—could recommend to the States to provide an army for the general defense, and apportion among the States their respective quotas, but could not enlist the men and order them into the Federal service. For these reasons a Federal Government, with its appropriate departments, acting directly upon the individual citizens, with authority to enforce its decrees to the extent of its delegated powers, and not dependent upon the voluntary action of the several States in their corporate capacity, became indispensable as a substitute for the government of the Confederation.

In the formation of the Constitution of the United States the Federal Convention took the British Constitution, as interpreted and expounded by the colonies during their controversy with Great Britain, for their model—making such modifications in its structure and principles as the change in our condition had rendered necessary. They intrusted the Executive functions to a President in the place of a King; the Legislative functions to a Congress composed of a Senate and House of Representatives, in lieu of the Parliament consisting of the Houses of Lords and Commons; and the Judicial functions to a Supreme Court and such inferior Courts as Congress should from time to time ordain and establish.

Having thus divided the powers of government into the three appropriate departments, with which they had always been familiar, they proceeded to confer upon the Federal Government substantially the same powers which they as colonies had been willing to concede to the British Government, and to reserve to the States and to the people the same rights and privileges which they as colonies had denied to the British Government during the entire struggle which terminated in our Independence, and which they had claimed for themselves and their posterity as the birth-right of all freemen, inalienable when organized into political communities, and to be enjoyed and exercised by Colonies, Territories, and Provinces as fully and completely as by sovereign States. Thus it will be seen that there is no organic feature or fundamental principle embodied in the Constitution of the United States which had not been familiar to the people of the Colonies from the period of their earliest settlement, and which had not been repeatedly asserted by them when denied by Great Britain during the whole period of their Colonial history.

Let us pause at this point for a moment, and inquire whether it be just to those illustrious patriots and sages who formed the Constitution of the United States, to assume that they intended to confer upon Congress that unlimited and arbitrary power over the people of the American Territories, which they had resisted with their blood when claimed by the British Parliament over British Colonies in America? Did they confer upon Congress the right to bind the people of the American Territories in all cases whatsoever, after having fought the battles of the Revolution against a "Preamble" declaring the right of Parliament "to bind the Colonies in all cases whatsoever?"

If, as they contended before the Revolution, it was the birth-right of all Englishmen, inalienable when formed into political communities, to exercise exclusive power of legislation in their local legislatures in respect to all things affecting their internal polity—slavery not excepted—did not the same right, after the Revolution, and by virtue of it, become the birth-right of all Americans, in like manner inalienable when organized into political communities—no matter by what name, whether Colonies, Territories, Provinces, or new States?

Names often deceive persons in respect to the nature and substance of things. A signal instance of this kind is to be found in that clause of the Constitution which says:

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

This being the only clause of the Constitution in which the word "territory" appears, that fact alone has doubtless led many persons to suppose that the right of Congress to establish temporary governments for the Territories, in the sense in which the word is now used, must be derived from it, overlooking the important and controlling facts that at the time the Constitution was formed the word "territory" had never been used or understood to designate a political community or government of any kind in any law, compact, deed of cession, or public document; but had invariably been used either in its geographical sense to describe the superficial area of a State or district of country, as in the Virginia deed of cession of the "territory or *tract of country*" northwest of the River Ohio; or as meaning land in its character as property, in which latter sense it appears in the clause of the Constitution referred to, when providing for the disposition of the "territory or other property belonging to the United States." These facts, taken in connection with the kindred one that during the whole period of the Confederation and the formation of the Constitution the temporary governments which we now call "Territories," were invariably referred to in the deeds of cession, laws, compacts, plans of government, resolutions of congress, public records, and authentic documents as "States," or "new States," conclusively show that the words "territory and other property" in the Constitution were used to des-

ignate the unappropriated lands and other property which the United States owned, and not the people who might become residents on those lands, and be organized into political communities after the United States had parted with their title.

It is from this clause of the Constitution alone that Congress derives the power to provide for the surveys and sale of the public lands and all other property belonging to the United States, not only in the Territories, but also in the several States of the Union. But for this provision Congress would have no power to authorize the sale of the public lands, military sites, old ships, cannon, muskets, or other property, real or personal, which belong to the United States and are no longer needed for any public purpose. It refers exclusively to property in contradistinction to persons and communities. It confers the same power "to make all needful rules and regulations" in the States as in the Territories, and extends wherever there may be any land or other property belonging to the United States to be regulated or disposed of; but does not authorize Congress to control or interfere with the domestic institutions and internal polity of the people (either in the States or the Territories) who may reside upon lands which the United States once owned. Such a power, had it been vested in Congress, would annihilate the sovereignty and freedom of the States as well as the great principle of self-government in the Territories, wherever the United States happen to own a portion of the public lands within their respective limits, as, at present, in the States of Alabama, Florida, Mississippi, Louisiana, Arkansas, Missouri, Illinois, Indiana, Ohio, Michigan, Wisconsin, Iowa, Minnesota, California, and Oregon, and in the Territories of Washington, Nebraska, Kansas, Utah, and New Mexico. The idea is repugnant to the spirit and genius of our complex system of government; because it effectually blots out the dividing line between Federal and Local authority which forms an essential barrier for the defense of the independence of the States and the liberties of the people against Federal invasion. With one anomalous exception, all the powers conferred on Congress are *Federal*, and not *Municipal*, in their character—affecting the general welfare of the whole country without interfering with the internal polity of the people—and can be carried into effect by laws which apply alike to States and Territories. The exception, being in derogation of one of the fundamental principles of our political system (because it authorizes the Federal government to control the municipal affairs and internal polity of the people in certain specified, limited localities), was not left to vague inference or loose construction, nor expressed in dubious or equivocal language; but is found plainly written in that Section of the Constitution which says:

"Congress shall have power to exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings."

No such power "to exercise exclusive legislation in all cases whatsoever," nor indeed any legislation in any case whatsoever, is conferred on Congress in respect to the municipal affairs and internal polity, either of the States or of the Territories. On the contrary, after the Constitution had been finally adopted, with its Federal powers delegated, enumerated, and defined, in order to guard in all future time against any possible infringement of the reserved rights of the States, or of the people, an amendment was incorporated into the Constitution which marks the dividing line between Federal and Local authority so directly and indelibly that no lapse of time, no partisan prejudice, no sectional aggrandizement, no frenzied fanaticism can efface it. The amendment is in these words:

"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."

This view of the subject is confirmed, if indeed any corroborative evidence is required, by reference to the proceedings and debates of the Federal Convention, as reported by Mr. Madison. On the 18th of August, after a series of resolutions had been adopted as the basis of the proposed Constitution and referred to the Committee of Detail for the purpose of being put in proper form, the record says:

"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 (Congress):

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

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

"To regulate affairs with the Indians, as well within as without the limits of the United States.

"To exercise exclusively legislative authority at the seat of the general government, and over a district around the same not exceeding —— square miles, the consent of the Legislature of the State or States comprising the same being first obtained."

Here we find the original and rough draft of these several powers as they now exist, in their revised form, in the Constitution. The provision empowering Congress "to dispose of the unappropriated lands of the United States" was modified and enlarged so as to include "other property belonging to the United States," and to authorize Congress to "make all needful rules and regulations" for the preservation, management, and sale of the same.

The provision empowering Congress "to institute temporary governments for the new States arising in the unappropriated lands of the United States," taken in connection with the one empowering Congress "to exercise exclusively Legislative authority at the seat of the general

government, and over a district of country around the same," clearly shows the difference in the extent and nature of the powers intended to be conferred in the new States or Territories on the one hand, and in the District of Columbia on the other. In the one case it was proposed to authorize Congress "to institute temporary governments for the new States," or Territories, as they are now called, just as our Revolutionary fathers recognized the right of the British crown to institute local governments for the colonies, by issuing charters, under which the people of the colonies were "entitled (according to the Bill of Rights adopted by the Continental Congress) to a free and exclusive power of legislation, in their several Provincial Legislatures, where their right of representation can alone be preserved, in all cases of taxation and internal polity;" while, in the other case, it was proposed to authorize Congress to exercise, exclusively, legislative authority over the municipal and internal polity of the people residing within the district which should be ceded for that purpose as the seat of the general government.

Each of these provisions was modified and perfected by the Committees of Detail and Revision, as will appear by comparing them with the corresponding clauses as finally incorporated into the Constitution. The provision to authorize Congress to institute temporary governments for the new States or Territories, and to provide for their admission into the Union, appears in the Constitution in this form:

"New States may be admitted by the Congress into this Union."

The power to admit "*new States*," and "to make all laws which shall be necessary and proper" to that end, may fairly be construed to include the right to institute temporary governments for such new States or Territories, the same as Great Britain could rightfully institute similar governments for the colonies; but certainly not to authorize Congress to legislate in respect to their municipal affairs and internal concerns, without violating that great fundamental principle in defense of which the battles of the Revolution were fought.

If judicial authority were deemed necessary to give force to principles so eminently just in themselves, and which form the basis of our entire political system, such authority may be found in the opinion of the Supreme Court of the United States in the Dred Scott case. In that case the Court say:

"This brings us to examine by what provision of the Constitution the present Federal Government, under its delegated and restricted powers, is authorized to acquire territory outside of the original limits of the United States, and what powers it may exercise therein over the person or property of a citizen of the United States, while it remains a Territory, and until it shall be admitted as one of the States of the Union.

"There is certainly no power given by the Constitution to the Federal Government to establish or maintain Colonies, bordering on the United States or at a distance, to be ruled and governed at its own pleasure; nor to enlarge its territorial limits in any way except by the admission of new States. . . .

"The power to expand the territory of the United States by the admission of new States is plainly given; and in the construction of this power by all the departments of the Government, it has been held to authorize the acquisition of territory, not fit for admission at the time, but to be admitted as soon as its population and situation would entitle it to admission. It is acquired to become a State, and not to be held as a Colony and governed by Congress with absolute authority; and as the propriety of admitting a new State is committed to the sound discretion of Congress, the power to acquire territory for that purpose, to be held by the United States until it is in a suitable condition to become a State upon an equal footing with the other States, must rest upon the same discretion."

Having determined the question that the power to acquire territory for the purpose of enlarging our territorial limits and increasing the number of States is included within the power to admit new States and conferred by the same clause of the Constitution, the Court proceed to say that "the power to acquire necessarily carries with it the power to preserve and apply to the purposes for which it was acquired." And again, referring to a former decision of the same Court in respect to the power of Congress to institute governments for the Territories, the Court say:

"The power stands firmly on the latter alternative put by the Court—that is, as 'the inevitable consequence of the right to acquire territory.'"

The power to acquire territory, as well as the right, in the language of Mr. Madison, "to institute temporary governments for the new States arising therein" (or Territorial governments, as they are now called), having been traced to that provision of the Constitution which provides for the admission of "new States," the Court proceed to consider the nature and extent of the power of Congress over the people of the Territories:

"All we mean to say on this point is, that, as there is no express regulation in the Constitution defining the power which the general Government may exercise over the person or property of a citizen in a Territory thus acquired, the Court must necessarily look to the provisions and principles of the Constitution, and its distribution of powers, for the rules and principles by which its decision must be governed.

"Taking this rule to guide us, it may be safely assumed that citizens of the United States, who emigrate to a Territory belonging to the people of the United States, can not be ruled as mere colonists, dependent upon the will of the general Government, and to be governed by any laws it may think proper to impose. . . . The Territory being a part of the United States, the Government and the citizen both enter it under the authority of the Constitution, with their respective rights defined and marked out; and the Federal Government can exercise no power over his person or property beyond what that instrument confers, nor lawfully deny any right which it has reserved."

Hence, inasmuch as the Constitution has con-

ferred on the Federal Government no right to interfere with the property, domestic relations, police regulations, or internal polity of the people of the Territories, it necessarily follows, under the authority of the Court, that Congress can rightfully exercise no such power over the people of the Territories. For this reason alone, the Supreme Court were authorized and compelled to pronounce the eighth section of the Act approved March 6, 1820 (commonly called the Missouri Compromise), inoperative and void—there being no power delegated to Congress in the Constitution authorizing Congress to prohibit slavery in the Territories.

In the course of the discussion of this question the Court gave an elaborate exposition of the structure, principles, and powers of the Federal Government; showing that it possesses no powers except those which are delegated, enumerated, and defined in the Constitution; and that all other powers are either *prohibited* altogether or are *reserved* to the States, or to the people. In order to show that the prohibited, as well as the delegated powers are enumerated and defined in the Constitution, the Court enumerated certain powers which can not be exercised either by Congress or by the Territorial Legislatures, or by any other authority whatever, for the simple reason that they are forbidden by the Constitution.

Some persons who have not examined critically the opinion of the Court in this respect have been induced to believe that the *slavery question* was included in this class of prohibited powers, and that the Court had decided in the Dred Scott case that the Territorial Legislature could not legislate in respect to slave property the same as all other property in the Territories. A few extracts from the opinion of the Court will correct this error, and show clearly the class of powers to which the Court referred, as being forbidden alike to the Federal Government, to the States, and to the Territories. The Court say:

"A reference to a few of the provisions of the Constitution will illustrate this proposition. For example, no one, we presume, will contend that Congress can make any law in a Territory respecting the establishment of religion, or the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people of the Territory peaceably to assemble, and to petition the Government for the redress of grievances.

"Nor can Congress deny to the people the right to keep and bear arms, nor the right to trial by jury, nor compel any one to be a witness against himself in a criminal proceeding. . . . So too, it will hardly be contended that Congress could by law quarter a soldier in a house in a Territory without the consent of the owner in a time of peace; nor in time of war but in a manner prescribed by law. Nor could they by law forfeit the property of a citizen in a Territory who was convicted of treason, for a longer period than the life of the person convicted, nor take private property for public use without just compensation.

"The powers over persons and property, of which we speak, are not only not granted to Congress, but are in express terms denied, and they are forbidden to exercise them. And this prohibition is not confined to the States, but the words are general, and extend to the whole territory over which the Constitution gives it power to legislate, including those portions of it remaining under Territorial Governments, as well as that covered by States.

"It is a total absence of power, every where within the dominion of the United States, and places the citizens of a Territory, so far as these rights are concerned, on the same footing with citizens of the States, and guards them as firmly and plainly against any inroads which the general Government might attempt, under the plea of implied or incidental powers. And if Congress itself can not do this—if it is beyond the powers conferred on the Federal Government—it will be admitted, we presume, that it could not authorize a Territorial government to exercise them. It could confer no power on any local government, established by its authority, to violate the provisions of the Constitution."

Nothing can be more certain than that the Court were here speaking only of *forbidden powers*, which were denied alike to Congress, to the State Legislatures, and to the Territorial Legislatures, and that the prohibition extends "every where within the dominion of the United States," applicable equally to States and Territories, as well as to the United States.

If this sweeping prohibition—this just but inexorable restriction upon the powers of government—Federal, State, and Territorial—shall ever be held to include the slavery question, thus negativing the right of the people of the States and Territories, as well as the Federal Government, to control it by law (and it will be observed that in the opinion of the Court "the citizens of a Territory, so far as these rights are concerned, are on the same footing with the citizens of the States"), then, indeed, will the doctrine become firmly established that the principles of law applicable to African slavery are *uniform throughout the dominion of the United States*, and that there "is an irrepressible conflict between opposing and enduring forces, which means that the United States must and will, sooner or later, become either entirely a slaveholding nation or entirely a free labor nation."

Notwithstanding the disastrous consequences which would inevitably result from the authoritative recognition and practical operation of such a doctrine, there are those who maintain that the Court referred to and included the slavery question within that class of forbidden powers which (although the same in the Territories as in the States) could not be exercised by the people of the Territories.

If this proposition were true, which fortunately for the peace and welfare of the whole country it is not, the conclusion would inevitably result, which they logically deduce from the premises—that the Constitution by the recognition of slavery establishes it in the Territories beyond the power of the people to control it by law, and guarantees to every citizen the right to go there and be protected in the enjoyment of his slave property; and when all other remedies fail for the protection of such rights of property, it becomes the imperative duty of Congress (to the perform-

ance of which every member is bound by his conscience and his oath, and from which no consideration of political policy or expediency can release him) to provide by law such adequate and complete protection as is essential to the full enjoyment of an important right secured by the Constitution. If the proposition be true, that the Constitution establishes slavery in the Territories beyond the power of the people legally to control it, another result, no less startling, and from which there is no escape, must inevitably follow. The Constitution is uniform "every where within the dominions of the United States"—is the same in Pennsylvania as in Kansas—and if it be true, as stated by the President in a special Message to Congress, "that slavery exists in Kansas by virtue of the Constitution of the United States," and that "Kansas is therefore at this moment as much a slave State as Georgia or South Carolina," why does it not exist in Pennsylvania by virtue of the same Constitution?

If it be said that Pennsylvania is a Sovereign State, and therefore has a right to regulate the slavery question within her own limits to suit herself, it must be borne in mind that the sovereignty of Pennsylvania, like that of every other State, is limited by the Constitution, which provides that:

"This Constitution, and all laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the *supreme law of the land*, and the judges in every State shall be bound thereby, *any thing in the Constitution or laws of any State to the contrary notwithstanding.*"

Hence, the State of Pennsylvania, with her Constitution and laws, and domestic institutions, and internal policy, is subordinate to the Constitution of the United States, in the same manner, and to the same extent, as the Territory of Kansas. The Kansas-Nebraska Act says that the Territory of Kansas shall exercise legislative power over "all rightful subjects of legislation consistent with the Constitution," and that the people of said Territory shall be left "perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States." The provisions of this Act are believed to be in entire harmony with the Constitution, and under them the people of Kansas possess every right, privilege, and immunity, in respect to their internal polity and domestic relations which the people of Pennsylvania can exercise under their Constitution and laws. Each is invested with full, complete, and exclusive powers in this respect, "subject only to the Constitution of the United States."

The question recurs then, if the Constitution does establish slavery in Kansas or any other Territory beyond the power of the people to control it by law, how can the conclusion be resisted that slavery is established in like manner and by the same authority in all the States of the Union? And if it be the imperative duty of Congress to provide by law for the protection of slave property in the Territories upon the ground that "slavery exists in Kansas" (and consequently in every other Territory), "by virtue of the Constitution of the United States," why is it not also the duty of Congress, for the same reason, to provide similar protection to slave property in all the States of the Union, when the Legislatures fail to furnish such protection?

Without confessing or attempting to avoid the inevitable consequences of their own doctrine, its advocates endeavor to fortify their position by citing the Dred Scott decision to prove that the Constitution recognizes property in slaves—that there is no legal distinction between this and every other description of property—that slave property and every other kind of property stand on an equal footing—that Congress has no more power over the one than over the other—and, consequently, can not discriminate between them.

Upon this point the Court say:

"Now as we have already said in an earlier part of this opinion, upon a different point, the right of property in a slave is distinctly and expressly affirmed in the Constitution. . . . . And if the Constitution recognizes the right of property of the master in a slave, and makes no distinction between that description of property and other property owned by a citizen, no tribunal acting under the authority of the United States, whether it be legislative, executive, or judicial, has a right to draw such a distinction, or deny to it the benefit of the provisions and guarantees which have been provided for the protection of private property against the encroachments of the government. . . . And the government in express terms is pledged to protect it in all future time, *if the slave escapes from his owner.* This is done in plain words—too plain to be misunderstood. And no word can be found in the Constitution which gives Congress a *greater* power over slave property, or which entitles property of that kind to *less* protection than property of any other description. The only power conferred is the power coupled with the duty of guarding and protecting the owner in his rights."

The rights of the owner which it is thus made the duty of the Federal Government to guard and protect are those expressly provided for in the Constitution, and defined in clear and explicit language by the Court—that "the government, in express terms, is pledged to protect it (slave property) in all future time, *if the slave escapes from his owner.*" This is the only contingency, according to the plain reading of the Constitution as authoritatively interpreted by the Supreme Court, in which the Federal Government is authorized, required, or permitted to interfere with slavery in the States or Territories; and in that case only for the purpose "of guarding and protecting the owner in his rights" to reclaim his slave property. In all other respects slaves stand on the same footing with all other property—"the Constitution makes no distinction between that description of property and other property owned by a citizen;" and "no word can be found in the Constitution which gives Congress a greater power over slave property, or which entitles property of that kind to less pro-

tection than property of any other description." This is the basis upon which all rights pertaining to slave property, either in the States or the Territories, stand under the Constitution as expounded by the Supreme Court in the Dred Scott case.

Inasmuch as the Constitution has delegated no power to the Federal Government in respect to any other kind of property belonging to the citizen—neither introducing, establishing, prohibiting, nor excluding it any where within the dominion of the United States, but leaves the owner thereof perfectly free to remove into any State or Territory and carry his property with him, and hold the same subject to the local law, and relying upon the local authorities for protection, it follows, according to the decision of the Court, that slave property stands on the same footing, is entitled to the same rights and immunities, and in like manner is dependent upon the local authorities and laws for protection.

The Court refer to that clause of the Constitution which provides for the rendition of fugitive slaves as their authority for saying that "the right of property in slaves is distinctly and expressly affirmed in the Constitution." By reference to that provision it will be seen that, while the word "slaves" is not used, still the Constitution not only recognizes the right of property in slaves, as stated by the Court, but explicitly states what class of persons shall be deemed slaves, and under what laws or authority they may be held to servitude, and under what circumstances fugitive slaves shall be restored to their owners, all in the same section, as follows:

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

Thus it will be seen that a slave, within the meaning of the Constitution, is a "person held to service or labor in one State, *under the laws thereof*"—not under the Constitution of the United States, nor by the laws thereof, nor by virtue of any Federal authority whatsoever, but under the laws of the particular State where such service or labor may be due.

It was necessary to give this exact definition of slavery in the Constitution in order to satisfy the people of the South as well as of the North. The slaveholding States would never consent for a moment that their domestic relations—and especially their right of property in their slaves—should be dependent upon Federal authority, or that Congress should have any power over the subject—either to extend, confine, or restrain it; much less to protect or regulate it—lest, under the pretense of protection and regulation, the Federal Government, under the influence of the strong and increasing anti-slavery sentiment which prevailed at that period, might destroy the institution, and divest those rights of property in slaves which were sacred under the laws and constitutions of their respective States so long as the Federal Government had no power to interfere with the subject.

In like manner the non-slaveholding States, while they were entirely willing to provide for the surrender of all fugitive slaves—as is conclusively shown by the unanimous vote of all the States in the Convention for the provision now under consideration—and to leave each State perfectly free to hold slaves under its own laws, and by virtue of its own separate and exclusive authority, so long as it pleased, and to abolish it when it chose, were unwilling to become responsible for its existence by incorporating it into the Constitution as a national institution, to be protected and regulated, extended and controlled by Federal authority, regardless of the wishes of the people, and in defiance of the local laws of the several States and Territories. For these opposite reasons the Southern and Northern States united in giving a unanimous vote in the Convention for that provision of the Constitution which recognizes slavery as a local institution in the several States where it exists, "under the laws thereof," and provides for the surrender of fugitive slaves.

It will be observed that the term "State" is used in this provision, as well as in various other parts of the Constitution, in the same sense in which it was used by Mr. Jefferson in his plan for establishing governments for the new States in the territory ceded and to be ceded to the United States, and by Mr. Madison in his proposition to confer on Congress power "to institute temporary governments for the *new States* arising in the unappropriated lands of the United States," to designate the political communities, Territories as well as States, within the dominion of the United States. The word "States" is used in the same sense in the ordinance of the 13th July, 1787, for the government of the territory northwest of the River Ohio, which was passed by the remnant of the Congress of the Confederation, sitting in New York while its most eminent members were at Philadelphia, as delegates to the Federal Convention, aiding in the formation of the Constitution of the United States.

In this sense the word "States" is used in the clause providing for the rendition of fugitive slaves, applicable to all political communities under the authority of the United States, including the Territories as well as the several States of the Union. Under any other construction the right of the owner to recover his slave would be restricted to the *States* of the Union, leaving the Territories a secure place of refuge for all fugitives. The same remark is applicable to the clause of the Constitution which provides that "a person charged in any *State* with treason, felony, or other crime, who shall flee from justice, and be found in *another State*, shall, on the demand of the executive authority of the *State* from which he fled, be delivered up to be removed to the State having jurisdiction of the crime." Unless the term State, as used in these provisions of the Constitution, shall be construed to include

every distinct political community under the jurisdiction of the United States, and to apply to Territories as well as to the States of the Union, the Territories must become a sanctuary for all the fugitives from service and justice, for all the felons and criminals who shall escape from the several *States* and seek refuge and immunity in the *Territories*.

If any other illustration were necessary to show that the political communities, which we now call Territories (but which, during the whole period of the Confederation and the formation of the Constitution, were always referred to as "States" or "New States"), are recognized as "States" in *some* of the provisions of the Constitution, they may be found in those clauses which declare that "no *State*" shall enter into any "treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility."

It must be borne in mind that in each of these cases where the power is not expressly delegated to Congress the prohibition is not imposed upon the Federal Government, but upon the *States*. There was no necessity for any such prohibition upon Congress or the Federal Government, for the reason that the omission to delegate any such powers in the Constitution was of itself a prohibition, and so declared in express terms by the 10th amendment, which declares 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."

Hence it would certainly be competent for the States and Territories to exercise these powers but for the prohibition contained in those provisions of the Constitution; and inasmuch as the prohibition only extends to the "States," the people of the "Territories" are still at liberty to exercise them, unless the Territories are included within the term *States*, within the meaning of these provisions of the Constitution of the United States.

It only remains to be shown that the Compromise Measures of 1850 and the Kansas-Nebraska Act of 1854 are in perfect harmony with, and a faithful embodiment of the principles herein enforced. A brief history of these measures will disclose the principles upon which they are founded.

On the 29th of January, 1850, Mr. Clay introduced into the Senate a series of resolutions upon the slavery question which were intended to form the basis of the subsequent legislation upon that subject. Pending the discussion of these resolutions the chairman of the Committee on Territories prepared and reported to the Senate, on the 25th of March, two bills—one for the admission of California into the Union of States, and the other for the organization of the Territories of Utah and New Mexico, and for the adjustment of the disputed boundary with the State of Texas, which were read twice and printed for the use of the Senate. On the 19th of April a select committee of thirteen was appointed, on motion of Mr. Foote, of Mississippi, of which Mr. Clay was made chairman, and to which were referred all pending propositions relating to the slavery question. On the 8th of May, Mr. Clay, from the select committee of thirteen, submitted to the Senate an elaborate report covering all the points in controversy, accompanied by a bill, which is usually known as the "Omnibus Bill." By reference to the provisions of this bill, as it appears on the files of the Senate, it will be seen that it is composed of the two printed bills which had been reported by the Committee on Territories on the 25th of March previous; and that the only material change in its provisions, involving an important and essential principle, is to be found in the tenth section, which prescribes and defines the powers of the Territorial Legislature. In the bill, as reported by the Committee on Territories, the legislative power of the Territories extended to "all rightful subjects of legislation consistent with the Constitution of the United States," *without excepting African slavery;* while the bill, as reported by the committee of thirteen, conferred the same power on the Territorial Legislature, *with the exception of African slavery*. This portion of the section in its original form read thus:

"*And be it further enacted* that the legislative power of the Territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and the provisions of this act; but no law shall be passed interfering with the primary disposition of the soil."

To which the committee of thirteen added these words: "*Nor in respect to African slavery.*" When the bill came up for action on the 15th of May, Mr. Davis, of Mississippi, said:

"I offer the following amendment. To strike out, in the sixth line of the tenth section, the words '*in respect to African slavery*,' and insert the words '*with those rights of property growing out of the institution of African slavery as it exists in any of the States of the Union.*' The object of the amendment is to prevent the Territorial Legislature from legislating against the rights of property growing out of the institution of slavery. . . . . It will leave to the Territorial Legislatures those rights and powers which are essentially necessary, not only to the preservation of property, but to the peace of the Territory. It will leave the right to make such police regulations as are necessary to prevent disorder, and which will be absolutely necessary with such property as that to secure its beneficial use to its owner. With this brief explanation I submit the amendment."

Mr. Clay, in reply to Mr. Davis, said:

"I am not perfectly sure that I comprehend the full meaning of the amendment offered by the Senator from Mississippi. If I do, I think he accomplishes nothing by striking out the clause now in the bill and inserting that which he proposes to insert. The clause now in the bill is, that the Territorial legislation shall not extend to any thing respecting African slavery within the Territory. The

effect of retaining the clause as reported by the Committee will be this: That if in any of the Territories slavery now exists, it shall not be abolished by the Territorial Legislature; and if in any of the Territories slavery does not now exist, it can not be introduced by the Territorial Legislature. The clause itself was introduced into the bill by the Committee for the purpose of tying up the hands of the Territorial Legislature in respect to legislating at all, one way or the other, upon the subject of African Slavery. It was intended to leave the legislation and the law of the respective Territories in the condition in which the Act will find them. I stated on a former occasion that I did not, in Committee, vote for the amendment to insert the clause, though it was proposed to be introduced by a majority of the Committee. I attached very little consequence to it at the time, and I attach very little to it at present. It is perhaps of no particular importance whatever. Now, Sir, if I understand the measure proposed by the Senator from Mississippi, it aims at the same thing. I do not understand him as proposing that if any one shall carry slaves into the Territory—although by the laws of the Territory he can not take them there—the legislative hands of the Territorial government should be so tied as to prevent it saying he shall not enjoy the fruits of their labor. If the Senator from Mississippi means to say that—"

Mr. Davis:

"I do mean to say it."

Mr. Clay:

"If the object of the Senator is to provide that slaves may be introduced into the Territory contrary to the *lex loci*, and, being introduced, nothing shall be done by the Legislature to impair the rights of owners to hold the slaves thus brought contrary to the local laws, *I certainly can not vote for it.* In doing so I shall repeat again the expression of opinion which I announced at an early period of the session."

Here we find the line distinctly drawn between those who contended for the right to carry slaves into the Territories and hold them in defiance of the local law, and those who contended that such right was subject to the local law of the Territory. During the progress of the discussion on the same day Mr. Davis, of Mississippi, said:

"We are giving, or proposing to give, a government to a Territory, which act rests upon the basis of our right to make such provision. We suppose we have a right to confer power. If so, we may mark out the limit to which they may legislate, and are bound not to confer power beyond that which exists in Congress. If we give them power to legislate beyond that we commit a fraud or usurpation, as it may be done openly, covertly, or indirectly."

To which Mr. Clay replied:

"Now, Sir, I only repeat what I have had occasion to say before, that while I am willing to stand aside and make no legislative enactment one way or the other—to lay off the Territories without the Wilmot Proviso, on the one hand, with which I understand we are threatened, or without an attempt to introduce a clause for the introduction of slavery into the Territories. While I am for rejecting both the one and the other, I am content that the law as it exists shall prevail; and if there be any diversity of opinion as to what it means, I am willing that it shall be settled by the highest judicial authority of the country. While I am content thus to abide the result, I must say that I can not vote for any express provision recognizing the right to carry slaves there."

To which Mr. Davis rejoined, that—

"It is said our Revolution grew out of a Preamble; and I hope we have something of the same character of the hardy men of the Revolution who first commenced the war with the mother country—something of the spirit of that bold Yankee who said he had a right to go to Concord, and that go he would; and who, in the maintenance of that right, met his death at the hands of a British sentinel. Now, Sir, if our right to carry slaves into these Territories be a constitutional right, it is our first duty to maintain it."

Pending the discussion which ensued Mr. Davis, at the suggestion of friends, modified his amendment from time to time, until it assumed the following shape:

"Nor to introduce or exclude African slavery. Provided that nothing herein contained shall be construed so as to prevent said Territorial Legislature from passing such laws as may be necessary for the protection of the rights of property of every kind which may have been, or may be hereafter, conformably to the Constitution of the United States, held in or introduced into said Territory."

To which, on the same day, Mr. Chase, of Ohio, offered the following amendment:

"Provided further, That nothing herein contained shall be construed as authorizing or permitting the introduction of slavery or the holding of persons as property within said Territory."

Upon these amendments—the one affirming the pro-slavery and the other the anti-slavery position, in opposition to the right of the people of the Territories to decide the slavery question for themselves—Mr. Douglas said:

"The position that I have ever taken has been, that this, and all other questions relating to the domestic affairs and domestic policy of the Territories, ought to be left to the decision of the people themselves; and that we ought to be content with whatever way they may decide the question, because they have a much deeper interest in these matters than we have, and know much better what institutions suit them than we, who have never been there, can decide for them. I would therefore have much preferred that that portion of the bill should have remained as it was reported from the committee on Territories, with no provision on the subject of slavery, the one way or the other. And I do hope yet that that clause will be stricken out. I am satisfied, Sir, that it gives no strength to the bill. I am satisfied, even if it did give strength to it, that it ought not to be there, *because it is a violation of principle*—a violation of that principle upon which we have all rested our defense of the course we have taken on this question. I do not see how those of us who have taken the position we have taken—that of *non-intervention*—and have argued in favor of the right of the people to legislate for themselves on this question, can support such a provision without abandon-

ing all the arguments which we used in the Presidential campaign in the year 1848, and the principles set forth by the honorable Senator from Michigan (Mr. Cass) in that letter which is known as the 'Nicholson Letter.' We are required to abandon that platform; we are required to abandon those principles, and to stultify ourselves, and to adopt the opposite doctrine—and for what? In order to say, that *the people of the Territories shall not have such institutions as they shall deem adapted to their condition and their wants.* I do not see, Sir, how such a provision can be acceptable either to the people of the North or the South."

Upon the question, how many inhabitants a Territory should contain before it should be formed into a political community with the rights of self-government, Mr. Douglas said:

"The Senator from Mississippi puts the question to me as to what number of people there must be in a Territory before this right to govern themselves accrues. Without determining the precise number, I will assume that the right ought to accrue to the people at the moment they have enough to constitute a government; and, Sir, the bill assumes that there are people enough there to require a government, and enough to authorize the people to govern themselves. . . . . Your bill concedes that a representative government is necessary—a government founded upon the principles of popular sovereignty and the right of a people to enact their own laws; and for this reason you give them a Legislature composed of two branches, like the Legislatures of the different States and Territories of the Union. You confer upon them the right to legislate on 'all rightful subjects of legislation,' except negroes. Why except negroes? Why except African slavery? If the inhabitants are competent to govern themselves upon all other subjects, and in reference to all other descriptions of property—if they are competent to make laws and determine the relations between husband and wife, and parent and child, and municipal laws affecting the rights and property of citizens generally, they are competent also to make laws to govern themselves in relation to slavery and negroes."

With reference to the protection of property in slaves, Mr. Douglas said:

"I have a word to say to the honorable Senator from Mississippi (Mr. Davis). He insists that I am not in favor of protecting property, and that his amendment is offered for the purpose of protecting property under the Constitution. Now, Sir, I ask you what authority he has for assuming that? Do I not desire to protect property because I wish to allow the people to pass such laws as they deem proper respecting their rights to property without any exception? He might just as well say that I am opposed to protecting property in merchandise, in steamboats, in cattle, in real estate, as to say that I am opposed to protecting property of any other description; for I desire to put them all on an equality, and allow the people to make their own laws in respect to the whole of them."

Mr. Cass said (referring to the amendments offered by Mr. Davis and Mr. Chase):

"Now with respect to the amendments. I shall vote against them both; and then I shall vote in favor of striking out the restriction in the Bill upon the power of the Territorial governments. I shall do so upon this ground. I was opposed, as the honorable Senator from Kentucky has declared he was, to the insertion of this prohibition by the committee. I consider it inexpedient and unconstitutional. I have already stated my belief that the rightful power of internal legislation in the Territories belongs to the people."

After further discussion the vote was taken by yeas and nays on the amendment of Mr. Chase, and decided in the negative: Yeas, 25; Nays, 30. The question recurring on the amendment of Mr. Davis, of Mississippi, it was also rejected: Yeas, 25; Nays, 30. Whereupon Mr. Seward offered the following amendment:

"Neither slavery nor involuntary servitude, otherwise than by conviction for crime, shall ever be allowed in either of said Territories of Utah and New Mexico."

Which was rejected—Yeas, 23; Nays, 33.

After various other amendments had been offered and voted upon—all relating to the power of the Territorial Legislature over slavery—Mr. Douglas moved to strike out all relating to African slavery, so that the Territorial Legislature should have the same power over that question as over all other rightful subjects of legislation consistent with the Constitution—which amendment was rejected. After the rejection of this amendment, the discussion was renewed with great ability and depth of feeling in respect to the powers which the Territorial Legislature should exercise upon the subject of slavery. Various propositions were made, and amendments offered and rejected—all relating to this one controverted point—when Mr. Norris, of New Hampshire, renewed the motion of Mr. Douglas, to strike out the restriction on the Territorial Legislature in respect to African slavery. On the 31st of July this amendment was adopted by a vote of 32 to 19—restoring this section of the bill to the form in which it was reported from the Committee on Territories on the 25th of March, and conferring on the Territorial Legislature power over "all rightful subjects of legislation consistent with the Constitution of the United States," *without excepting African slavery.*

Thus terminated this great struggle in the affirmance of the principle, as the basis of the compromise measures of 1850, so far as they related to the organization of the Territories, *that the people of the Territories should decide the slavery question for themselves through the action of their Territorial Legislatures.*

This controverted question having been definitely settled, the Senate proceeded on the same day to consider the other portions of the bill, and after striking out all except those provisions which provided for the organization of the Territory of Utah, ordered the bill to be engrossed for a third reading, and on the next day—August 1, 1850—the bill was read a third time, and passed.

On the 14th of August the bill for the organization of the Territory of New Mexico was taken up, and amended so as to conform fully to the provisions of the Utah Act in respect to the power of the Territorial Legislature over "all

rightful subjects of legislation consistent with the Constitution," without excepting African slavery, and was ordered to be engrossed for a third reading without a division; and on the next day the bill was passed—Yeas, 27; Nays, 10.

These two bills were sent to the House of Representatives, and passed that body without any alteration in respect to the power of the Territorial Legislatures over the subject of slavery, and were approved by President Filmore September 9, 1850.

In 1852, when the two great political parties —Whig and Democratic—into which the country was then divided, assembled in National Convention at Baltimore for the purpose of nominating candidates for the Presidency and Vice-Presidency, each Convention adopted and affirmed the principles embodied in the compromise measures of 1850 as rules of action by which they would be governed in all future cases in the organization of Territorial governments and the admission of new States.

On the 4th of January, 1854, the Committee on Territories of the Senate, to which had been referred a bill for the organization of the Territory of Nebraska, reported the bill back, with an amendment, in the form of a substitute for the entire bill, which, with some modifications, is now known on the statute book as the "Kansas-Nebraska Act," accompanied by a Report explaining the principles upon which it was proposed to organize those Territories, as follows:

"The principal amendments which your Committee deem it their duty to commend to the favorable action of the Senate, in a special report, are those in which the principles established by the Compromise Measures of 1850, so far as they are applicable to territorial organizations, are proposed to be affirmed and carried into practical operation within the limits of the new Territory. The wisdom of those measures is attested, not less by their salutary and beneficial effects in allaying sectional agitation and restoring peace and harmony to an irritated and distracted people, than by the cordial and almost universal approbation with which they have been received and sanctioned by the whole country.

"In the judgment of your Committee, those measures were intended to have a far more comprehensive and enduring effect than the mere adjustment of the difficulties arising out of the recent acquisition of Mexican territory. They were designed to establish certain great principles, which would not only furnish adequate remedies for existing evils, but, in all time to come, avoid the perils of a similar agitation, by withdrawing the question of slavery from the Halls of Congress and the political arena, and committing it to the arbitrament of those who were immediately interested in and alone responsible for its consequences. With a view of conforming their action to the settled policy of the Government, sanctioned by the approving voice of the American people, your Committee have deemed it their duty to incorporate and perpetuate, in their territorial bill, the principles and spirit of those measures."

After presenting and reviewing certain provisions of the bill, the Committee conclude as follows:

"From these provisions it is apparent that the Compromise Measures of 1850 affirm and rest upon the following propositions:

"'First.—That all questions pertaining to slavery in the Territories, and in the new States to be formed therefrom, are to be left to the decision of the people residing therein, by their appropriate representatives to be chosen by them for that purpose.

"'Second.—That all cases involving title to slaves and questions of personal freedom, are referred to the adjudication of the local tribunals, with the right of appeal to the Supreme Court of the United States.

"'Third.—That the provision of the Constitution of the United States in respect to fugitives from service, is to be carried into faithful execution in all the organized Territories, the same as in the States. The substitute for the bill which your Committee have prepared, and which is commended to the favorable action of the Senate, proposes to carry these propositions and principles into practical operation, in the precise language of the Compromise Measures of 1850.'"

By reference to that section of the "Kansas-Nebraska Act" as it now stands on the statute book, which prescribed and defined the power of the Territorial Legislature, it will be seen that it is, "in the precise language of the Compromise Measures of 1850," extending the legislative power of the Territory "to all rightful subjects of legislation consistent with the Constitution," without excepting African slavery.

It having been suggested, with some plausibility, during the discussion of the bill, that the act of Congress of March 6, 1820, prohibiting slavery north of the parallel of 36° 30′ would deprive the people of the Territory of the power of regulating the slavery question to suit themselves while they should remain in a territorial condition, and before they should have the requisite population to entitle them to admission into the Union as a State, an amendment was prepared by the chairman of the Committee, and incorporated into the bill to remove this obstacle to the free exercise of the principle of popular sovereignty in the Territory, while it remained in a territorial condition, by repealing the said act of Congress, and declaring the true intent and meaning of all the friends of the bill in these words:

"That the Constitution and all laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere within the United States, except the eighth section of the act preparatory to the admission of Missouri into the Union, approved March 6, 1820, which being inconsistent with the principle of non-intervention by Congress with slavery in the States and Territories, as recognized by the legislation of 1850, commonly called the 'Compromise Measures,' is hereby declared inoperative and void—*it being the true intent and meaning of this act not to legislate slavery into any Territory or State, nor to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions their own way, subject only to the Constitution of the United States.*"

To which was added, on motion of Mr. Badger, the following:

"*Provided*, That nothing herein contained shall

be construed to revive or put in force any law or regulation which may have existed prior to the act of the sixth of March, 1820, either protecting, establishing, or abolishing slavery."

In this form, and with this distinct understanding of its "true intent and meaning," the bill passed the two houses of Congress, and became the law of the land by the approval of the President, May 30, 1854.

In 1856, the Democratic party, assembled in National Convention at Cincinnati, declared by a unanimous vote of the delegates from every State in the Union, that

"The American Democracy recognize and adopt the principles contained in the organic laws establishing the Territories of Kansas and Nebraska as embodying the only sound and safe solution of the 'slavery question,' upon which the great national idea of the people of this whole country can repose in its determined conservatism of the Union — non-interference by Congress with slavery in State and Territory, or in the District of Columbia;"

"That this was the basis of the Compromises of 1850, confirmed by both the Democratic and Whig parties in National Conventions—ratified by the people in the election of 1852—and rightly applied to the organization of the Territories in 1854; That by the uniform application of this Democratic principle to the organization of Territories and to the admission of New States, with or without domestic slavery as they may elect, the equal rights of all will be preserved intact—the original compacts of the Constitution maintained inviolate—and the perpetuity and expansion of this Union insured to its utmost capacity of embracing in peace and harmony any future American State that may be constituted or annexed with a Republican form of government."

In accepting the nomination of this Convention, Mr. Buchanan, in a letter dated June 16, 1856, said:

"The agitation on the question of domestic slavery has too long distracted and divided the people of this Union, and alienated their affections from each other. This agitation has assumed many forms since its commencement, but it now seems to be directed chiefly to the Territories; and judging from its present character, I think we may safely anticipate that it is rapidly approaching a 'finality.' The recent legislation of Congress respecting domestic slavery, derived, as it has been, from the original and pure fountain of legitimate political power, the will of the majority, promises, ere long, to allay the dangerous excitement. This legislation is founded upon principles as ancient as free government itself, and in accordance with them has simply declared that the people of a Territory, like those of a State, *shall decide for themselves whether slavery shall or shall not exist within their limits.*"

This exposition of the history of these measures shows conclusively that the authors of the Compromise Measures of 1850, and of the Kansas-Nebraska Act of 1854, as well as the members of the Continental Congress in 1774, and the founders of our system of government subsequent to the Revolution, regarded the people of the Territories and Colonies as political Communities which were entitled to a free and exclusive power of legislation in their Provincial legislatures, where their representation could alone be preserved, in all cases of taxation and internal polity. This right pertains to the people collectively as a law-abiding and peaceful community, and not to the isolated individuals who may wander upon the public domain in violation of law. It can only be exercised where there are inhabitants sufficient to constitute a government, and capable of performing its various functions and duties—a fact to be ascertained and determined by Congress. Whether the number shall be fixed at ten, fifteen, or twenty thousand inhabitants does not affect the principle.

The principle, under our political system, is *that every distinct political Community, loyal to the Constitution and the Union, is entitled to all the rights, privileges, and immunities of self-government in respect to their local concerns and internal polity, subject only to the Constitution of the United States.*

THE VIRGINIANS.

BY W. M. THACKERAY.

CHAPTER LXXXIV.

HARD times were now over with me, and I had to battle with poverty no more. My little kinsman's death made a vast difference in my worldly prospects. I became next heir to a good estate. My uncle and his wife were not likely to have more children. "The woman is capable of committing any crime to disappoint you," Sampson vowed; but, in truth, my Lady Warrington was guilty of no such treachery. Cruelly smitten by the stroke which fell upon them, Lady Warrington was taught by her religious advisers to consider it as a chastisement of Heaven, and submit to the Divine Will. "While your son lived your heart was turned away from the better world" (her clergyman told her), "and your ladyship thought too much of this. For your son's advantage you desired rank and title. You asked and might have obtained an earthly coronet. Of what avail is it now, to one who has but a few years to pass upon earth—of what importance compared to the heavenly crown, for which you are an assured candidate?" The accident caused no little sensation. In the chapels of that enthusiastic sect, toward which, after her son's death, she now more than ever inclined, many sermons were preached bearing reference to the event. Far be it from me to question the course which the bereaved mother pursued, or to regard with other than respect and sympathy any unhappy soul from seeking that refuge whither sin and grief and disappointment fly for consolation. Lady Warrington even tried a reconciliation with myself.

A year after her loss, being in London, she signified that she would see me, and I waited on her; and she gave me, in her usual didactic way, a homily upon my position and her own. She marveled at the decree of Heaven, which had permitted, and how dreadfully punished! her poor child's disobedience to her—a disobedience

The Constitution.

GEO. W. BOWMAN, Editor and Proprietor.

WASHINGTON CITY, OCTOBER 6, 1859.

APPENDIX TO JUDGE BLACK'S PAMPHLET.

We publish below an appendix to Judge BLACK's "Observations on Senator Douglas's Views on Popular Sovereignty," called forth on the demand for a second edition by Judge D.'s attempt to reply to those "Observations" at Wooster, Ohio, and by the commentaries which have been made on them by some of his friends. The appendix, couched in the same dignified, unimpassioned language as the "Observations," is marked by the same force of thought, closeness of reasoning, and felicity of expression that characterized the pamphlet. It lays bare to the very bone the flaws and imperfections of Judge Douglas's "Views on Popular Sovereignty," modified, amended, and altered though they have been by reflection and by circumstances; shows that all attempt to give new readings of the Constitution which the Supreme Court does not warrant, are sure to lead to disastrous consequences, and recommends all who desire to preserve an unblemished political reputation to respect the principles, and acknowledge the binding force of the guarantees of the Great Charter of our Liberties.

We commend the appendix to the earnest perusal of our readers and of the American people generally.

APPENDIX.

Another edition of these "Observations" being called for, an opportunity is afforded of adding some thoughts suggested by the attempted reply of Mr. Douglas, and by some criticisms of a different kind which have appeared in other quarters.

Mr. Douglas charges us with entertaining the opinion that "all the States of the Union" may confiscate private property—a doctrine which he denounces as a most "wicked and dangerous heresy." He championizes the inviolability of property, and invokes the fiery indignation of the public upon us for ascribing to the States any power of taking it away. Now mark how plain a tale will put him down.

There is no such thing and nothing like it on all these pages, from the first to the last. Mr. Douglas was merely flourishing his lance in the empty air. He had no ground for his assertion, except a most unauthorized inference of his own from our denial that the power existed in the Territories. The Territories must wait till they become sovereign States before they can confiscate property: that was our position. Therefore, says the logic of Mr. Douglas, all the States in the Union may do it now. What right had he to make imputations of heresy founded upon mere *inference*, when our opinion *on the very point* was directly expressed in words so plain that mistake was impossible? The following sentences occur on page 12:

"All free people know, that if they would remain free, they must compel the Government to keep its hands off their private property; and this can be done only by tying them up with careful restrictions. Accordingly our Federal Constitution declares that 'no person shall be deprived of his property except by due process of law,' and that 'private property shall not be taken for public use without just compensation.' It is universally agreed that this applies only to the exercise of the power by the Government of the United States. We are also protected against the State governments by a similar provision in the State constitutions. Legislative robbery is, therefore, a crime which cannot be committed either by Congress or by any State legislature, unless it be done in flat rebellion to the fundamental law of the land."

The close of the same paragraph shows why it was important that no attempt should be made to exercise such power by a Territory:

"Is it not every way better to wait until the new inhabitants know themselves and one another; until the policy of the Territory is settled by some experience; and, above all, until the great powers of a sovereign State are regularly conferred upon them and properly limited, so as to prevent the gross abuses which always accompany unrestricted power in human hands?"

Mr. Douglas certainly read these passages, for he borrowed a phrase from them, and put it into his own speech. He ought to have understood them. If he both read and understood them, why did he allege that this pamphlet favored the dangerous heresy referred to? Let the charity which "thinketh no evil" find the best excuse for him it can.

That the government of a sovereign State, unrestricted and unchecked by any constitutional prohibition, would have power to confiscate private property, even without compensation to the owner, is a proposition which will scarcely be denied by any one who has mastered the primer of political science. Sovereignty, which is the supreme authority of an independent State or government, is in its nature irresponsible and absolute. It cannot be otherwise, since it has no superior by whom it can be called to account. Mere moral abstractions or theoretic principles of natural justice do not limit the legal authority of a sovereign. No government *ought* to violate justice; but any supreme government, whose hands are entirely free, *can* violate it with impunity. For these reasons it is that the Saxon race have been laboring, planning, and fighting during seven hundred years, for Great Charters, Bills of Rights, and Constitutions to limit the sovereignty of all the governments they have lived under. Our ancestors in the old country, as well as in America, have wasted their money and blood in vain to establish constitutional governments, if it be true that a government without a constitution is not capable of doing injustice. They knew better than that. They understood very well that a sovereign government, no matter by whom its power is wielded, may do what wrong it pleases, and "bid its will avouch the deed."

Now, what is the constitutional prohibition which can anywhere be found to restrain "Popular Sovereignty in the Territories" (if there be such a thing there) from confiscating any citizen's property? There is none. A Territory has no constitution of its own; and nobody would be absurd enough to say, that it is governed by the constitution of another State. Will it be said, that the provision in the Federal Constitution, which forbids the taking of private property without compensation, can be used so as to restrain a territorial sovereignty? Certainly not. The Supreme Court have decided, (in Barron *vs.* The City of Baltimore, 7 Peters, 243) that the clause referred to applies exclusively to the exercise of the

power by the Federal Government. The rule was so laid down by Chief Justice Marshall. It was concurred in by the whole court; and its correctness has never been denied or doubted by any judge, lawyer, or statesman from the time of the decision to this day. If, therefore, there be a sovereignty in the Territories, it is sovereignty unlimited by any constitutional interdict. This implies a power in the Territories infinitely greater than that of any other government in all North America.

The simple and easy solution of all this difficulty is furnished by the Supreme Court, and adopted by the democratic party as the true principle governing the subject. It is this: That the Territories are not sovereignties, but their governments are public corporations, established by Congress to manage the local affairs of the inhabitants, like the government of a city, established by a State legislature. Indeed, there is, probably, no city in the United States, whose powers are not larger than those of a Federal Territory. The people of a city elect their own mayor, and, directly or indirectly, appoint their municipal officers. But the President appoints the Chief Executive of a Territory, as well as the judges. He may send them there from any part of the Union, and in point of fact they are generally strangers to the inhabitants when first chosen. They are in no way responsible to the Territory or its people, but to the Federal Government alone, and they may be removed whenever the President thinks proper. The territorial legislature is sometimes (and only sometimes) elected by the people; but why? Because Congress has been pleased to permit it by the organic act. The power that gives this privilege could withhold it too. It is always coupled with restrictions and regulations which could never be imposed on a sovereignty by any authority except its own. The organic act generally prescribes the qualifications of voters, and divides the territory into districts; and the action of the legislative body itself is controlled by the veto power of a governor appointed by the President and removable at his pleasure. It is too clear for possible controversy, that a Territory is not a sovereign power, but a subordinate dependency. It cannot deprive a man of his property without due process of law, or without just compensation, for two reasons: 1. It has no sovereign power of its own; and, 2. The Federal Government, being forbidden by the Constitution to exercise such power itself, cannot bestow it on a Territory. The Constitution of the United States protects a man's property from being plundered by a territorial legislature, just as a State constitution protects it from robbery by the authorities of a city corporation.

It should be noted that when this question was before the Supreme Court of the United States, there was some difference of opinion among the judges, on the question whether Congress might, or might not, legislate for a Territory in such manner as to take away the right of property in slaves. A majority of two-thirds or more held the negative; and Mr. Douglas admits that the majority was clearly right. But no member of the court expressed the opinion, nor was it even thought of by the counsel, that the Territories had any such inherent and natural power of their own. Indeed there is no judge of any grade or character, nor any writer on law or government, who has ever asserted or given the least countenance to this *notion* of *popular* or any other kind of *sovereignty in the Territories*.

Some trouble will be saved in this part of the argument, by the fact that since the first publication of this pamphlet, Mr. Douglas denies and repudiates all claim of sovereignty for the Territories. He even says that he never did regard them as sovereigns. His words spoken at Wooster, Ohio, and written out by himself are these:

"I NEVER *claimed that territorial governments were sovereign, or that the Territories were sovereign powers.*"

Of course this is not to be understood as a mere naked denial that he had previously used those very words. We have no right to charge Mr. Douglas with adopting the exploded system of morality, which allows a man to cover up the truth under an *equivoque*. We are bound to take his denial fairly, as meaning, that he never thought the Territories had the rights and powers, which belong to sovereign governments. Let us see how this assertion will stand the test of investigation.

We do not deny, that the article in Harper is extremely difficult to understand. Its unjointed thoughts, loose expression, and illogical reasoning, have covered it with shadows, clouds, and darkness. But we will not admit that it has no meaning at all. It is scarcely possible to mistake the general purpose of the author. That purpose undoubtedly was to prove that the States and Territories, so far as concerns their internal affairs, have political rights and powers which are precisely equal. In fact, he declares, in so many words, that Pennsylvania and Kansas are subordinate to the Constitution "*in the same manner and to the same extent.*" He not only levels the Territories up to the States, but levels the States down to the Territories. If Kansas has slavery by virtue of the Constitution, he insists, that, by the same reasoning, Pennsylvania has it too. Now we know Pennsylvania to be a sovereign; and if Kansas be her equal, then Kansas must necessarily be a sovereign also.

But look at the last sentence, which is the grand summary of his whole doctrine:

"The *principle under our political system* is that *every distinct political community*, loyal to the Constitution and the Union, *is entitled to all the rights, privileges, and immunities of self-government* in respect to their local concerns and internal polity, subject only to the Constitution of the United States."

Here the States and Territories are placed on a footing of perfect equality. There is no distinction made between them. If the States are sovereign, so are the Territories. Besides, the "rights, privileges, and immunities," which he describes as pertaining to every distinct political community, (that is, to both States and Territories,) are sovereign rights, and nothing else. Any community which has the independent and uncontrollable right of self-government, with respect to its local concerns and internal polity, must be, *quoad hoc*, a sovereign.

Again: Mr. Douglas in his speech at Cincinnati, made so lately as the 9th of September last, used the following unmistakable language:

"Examine the bills and search the records and you will "find that the *great principle* which underlies those meas-"ures (the compromise of 1850) is the *right* of the people "of *each State, and each Territory* WHILE A TERRITORY, to DE-"CIDE the slavery question for themselves."

Is not this claiming sovereignty for the Territories? Can the slavery question be *decided* without legislating upon the right of property? Can a subordinate government do that? If the Territories have power to decide whether a man shall keep his property or not, where did the power come from? Surely not from Congress through the organic acts. They must have it then upon what Mr. Douglas calls a *great principle*, and that great principle can be nothing else than "Sovereignty in the Territories." Thus it is seen that Mr. Douglas makes a tour to

the West, and on his way back he contradicts what he said as he went out.

There are but two sides to this controversy: The Territories are either sovereign powers by natural and inherent right, or else they are political corporations, owing all the authority they possess to the acts of Congress which create them. It is not possible to believe, that Mr. Douglas wrote thirty-eight columns in a magazine to prove the truth of the latter doctrine. Nobody but himself and his followers were ever accused of denying it. If *he* did not deny it, and plant himself upon the opposing ground of *sovereignty in the Territories*, then there was no dispute, or cause of division, between him and the democratic party; and he has consequently been engaged in raising an excitement about nothing;—trying to toss the ocean of politics into a tempest, without having even a feather to waft, or a fly to drown.

But that is not all. Mr. Douglas has continually used the *very word sovereignty* with reference to the Territories. This *sovereignty in the Territories* he has asserted and re-asserted so often, that the phrase is in great danger of becoming ridiculous by the mere frequency with which he repeats it. For many months he has not made a speech or written a letter for the newspapers on any other subject. It heads his elaborate article in Harper; it is vociferated into the public ear from the stump; and it stares at us in great capitals from the hand-bills which call the people to his meetings. Unless it be acknowledged, he predicts the hopeless division of the party, and even threatens to refuse its nomination for the Presidency. Now, all at once, the subject-matter of the whole controversy is admitted to be a nonentity. He "checks his thunder in mid-volley," and owns that there is no sovereignty in a Territory any more than in a British colony. Other persons may have ridden their hobbies as hard as Mr. Douglas; but, since the beginning of the world, no man ever dismounted so suddenly.

"Sovereignty in the Territories," of which we have heard so much, is generally, if not always, coupled by Mr. Douglas with the prefix of "*Popular*." This last word appears to be used for the mere sake of the sound, and without any regard whatever to the sense. It does not mean that the people or inhabitants of the Territories have any supreme power independent of the laws, or above the regularly constituted legal authorities. They cannot meet together, count themselves, and say: "We are so many hundreds, or so many thousands, and we must therefore be obeyed; the law is in our voice, and not in the rules which our Government has made to control us." Something like this view was vaguely entertained in times when the Lecompton constitution was opposed. But that is gone by. Mature reflection has left *mobocracy* without a defender. Nobody now insists that the right to make or annul laws and constitutions can be exercised in voluntary mass-meetings or at elections unauthorized by law. Mr. Douglas himself says: "It can *only* be exercised where the inhabitants are *sufficient to constitute a government*, and capable of *performing its various functions and duties*—a fact to be ascertained and determined by Congress." The sovereignty, then, is in the government, if it be anywhere. But Mr. Douglas now says it is not there; and he is right. That being the case, where is it?

When Mr. Douglas, in his speech at Wooster, was repudiating and denying the doctrine of sovereignty in the Territories, and resuming his old position, that they are not sovereign powers, it would have been well to fall back upon something a little more intelligible than his reports to the Senate, or his anti-Lecompton letter to Philadelphia. Here is the way he describes sovereignty in his report of 1856:

"The sovereignty of a Territory remains *in abeyance, suspended in the United States, in trust* for the people until they shall be admitted into the Union as a State."

What do these words mean, and in what possible way can they help us to a knowledge of the matter under consideration? *Abeyance* is good law French, and signifies the peculiar condition of an estate after one tenant has died, and before his successor is competent to take it. But what application can it have, even by analogy, to a sovereignty which never existed? It seems, too, that this sovereignty is *suspended* in the United States; that is, *hung* or *dependent* from something in the United States, and not *independent* like every other sovereignty under heaven. But the most marvellous part of the business is that one government which *is* sovereign is represented as a trustee of the sovereignty of another government which is admitted *not* to be sovereign. This is the talk of a man who has too much learning. These technical terms of the common law were invented by English conveyancers and real property lawyers, for the purpose of expressing the artificial relations which men sometimes bear to lands, tenements, and hereditaments; but they are wholly inapplicable to such a subject as the sovereignty of a State or nation. We might as well call territorial sovereignty, a contingent remainder, an executory devise, or a special fee tail.

There is some confusion of ideas on another subject. Mr. Douglas and his disciples ascribe to certain democrats (to the President among others) the belief that the Constitution *establishes* slavery in the Territories; and to sustain this accusation they quote from a message in which the EXISTENCE of slavery in the Territories *by virtue of the Constitution* is asserted on the authority of the Supreme Court. Now we are in the wrong, if the expression that a thing *exists* by virtue of the Constitution be equivalent to saying that the Constitution has *established* it. There is not only a substantial, but a wide and most obvious difference. The Constitution does not establish Christianity in the Territories; but Christianity exists there by virtue of the Constitution; because when a Christian moves into a Territory, he cannot be prevented from taking his religion along with him, nor can he afterwards be legally molested for making its principles the rule of his faith and practice.

We have said, and we repeat, that a man does not forfeit his right of property in a slave by migrating with him to a Territory. The title which the owner acquired in the State from whence he came must be respected in his new domicil as it was in the old, until it is legally and constitutionally divested. The proposition is undeniable. But the absurd inference which some persons have drawn from it is not true, that the master also takes with him the judicial *remedies* which were furnished him at the place where his title was acquired. Whether the relation of master and slave exists or not, is a question which must be determined according to the law of the State in which it was created; but the respective rights and obligations of the parties must be protected and enforced by the law prevailing at the place where they are supposed to be violated. This is also true with respect to rights of every other kind. Two merchants living in the same town may buy their goods in different States. Can it be doubted that the title of each depends on the law of the State where he made his purchase? But the

law of larceny and trespass is the law of a forum common to both, and must necessarily be the same. The validity of a man's marriage is tried by the standard of the law which prevailed in the country where it was solemnized; but if he beats his wife, she must seek protection from the law of the place where they live.

Some of Mr. Douglas's partizans, and nearly all of the anti-slavery opposition, contend that property in slave cannot exist so as to entitle it to the protection o the same laws which secure the right of property ir other things. For their benefit we shall briefly show how impossible it is to admit the distinction which they insist upon.

What is property? Whatever a person may legally appropriate to his own exclusive use and transfer to another by sale or gift. By the laws of the southern States, negroes are within this definition, and the Constitution of the United States not only recognises the validity of the State laws, but it aids in carrying them out. The framers of the Constitution, seeing that slaves were liable to one danger from which all other property was exempt, namely, that of being seduced away by the offer, in other States, of legal shelter from the pursuit of their owners, agreed that the Federal Government should guarantee their redelivery to the exclusive possession of the persons entitled to them as proprietors. The law, then, of the States in which they are and the Constitution of the Federal Government, to all legal intents and purposes, pronounce that slaves are property. Beaten here, our adversaries convert it from a legal to a theological question. But when they appeal from the Constitution to the Bible, they are equally dissatisfied with the decision they get. Nothing is left them but that "Higher Law," which has no sanction nor no authority, Divine or human. Those who reject the Constitution must be content to follow guides who are stone blind. They are men who aspire to be wise above what is written, and thereby press themselves down to the extremest point of human folly. They turn their backs on all the light, which the world has, or can have; they go forth into outer darkness, and wander perpetually in a howling wilderness of error.

But Mr. Douglas is guiltless of this heresy, at least. He concedes that slaves are precisely like other property, so far as regards the legal remedies and constitutional rights of the owner. He professes to take the fundamental law of the land for his guide upon that point Let his practice, then, correspond with his faith; let him "walk worthy of the vocation wherewith he is called;" let him make no more appeals to popular prejudice for a sovereignty which does not exist; above all things, let him never, by the slightest suggestion, encourage any territorial government to undermine the rights of the citizen by *legislation* which is "unfriendly" to the security of either property or life. We must not palter with the Constitution in a double sense, but obey it, support it, defend it, earnestly and faithfully, like men who believe in it and love it. Whosoever attempts to trifle with its principles, or weaken the obligation of its guarantees, will find sooner or later that he has fixed a stain upon his political character which "there is not rain enough in the sweet heavens" to wash out.

The Constitution.

GEO. W. BOWMAN, Editor and Proprietor.

WASHINGTON CITY, NOVEMBER 3, 1859.

SENATOR DOUGLAS'S LAST EFFORT.

Three or four days ago there appeared a pamphlet elaborately got up by Judge Douglas, the object of which was to right himself on the territorial question. It was certainly proper for him to show that he had the will, if not the power, to be something more than merely abusive. This pamphlet has cost him a large amount of labor. It smells from beginning to end of the midnight oil. His black-republican toadies pronounced it a "*crushing argument*," merely because they knew that it would flatter him, and incite him to keep up the war against the democratic party, for their benefit. Three or four of his other organs have echoed the sentiment for the same reason.

Below we publish the Attorney General's rejoinder, written immediately upon the appearance of Judge Douglas's pamphlet. We have no comment to make upon it, except that its facts are incontestable, its reasoning irresistible, and its tone calm, temperate, and dignified, and worthy of this subject. It cannot be doubted that the spontaneous public opinion of the whole nation will endorse the truth as well as the ability of this rejoinder as fully as it has already endorsed the two preceding articles on this subject from the same pen. No public paper, whether pamphlet, speech, essay, or report, ever went out from Washington and received such universal approbation from the people and the press as those articles have received. It was imprudent in Judge Douglas to expose himself to such a fire, but he must blame himself for the awkward position in which he is placed.

REJOINDER TO SENATOR DOUGLAS'S LAST.

As briefly as possible, eschewing all matters personal or quasi personal, and without introduction or preface, I shall notice the only points in Mr. Douglas's last pamphlet that are worthy of attention.

He denies that his views on "Sovereignty in the Territories," as expressed in Harper's Magazine, are inconsistent with those of the Supreme Court in the Dred Scott case. I aver, on the contrary, that he could not have made such a denial if he had not totally misunderstood either his own opinions or those of the court; for they are in direct conflict with one another. A plain issue of fact is thus made up between us, and it is triable by the record. Let us look at it.

The court, after demonstrating in the clearest manner that the Federal Government had no authority or jurisdiction to abolish slavery in a Territory, proceeded to say what Mr. Douglas himself has quoted on page 530 of the magazine:

"And *if Congress itself cannot do this*—if it is beyond the powers conferred on the Federal Government—it will be admitted, we presume, that *it could not authorize a territorial government* to exercise them. It could confer no power on any local government established by its authority to violate the provisions of the Constitution."

This is in substance the very identical proposition which Mr. Douglas, on page 520, pronounces to be "as plausible as it is *fallacious*." He adds, that "the *reverse of it is true as a general rule*;" and then supports his assertion by another assertion the most singular that ever was placed on record by any man having the slightest pretensions to a knowledge of our government; namely, that Congress *could confer* upon a Territory such powers, "and ONLY such as *Congress cannot exercise* under the Constitution!" There is the record; and I am perfectly sure that no tolerably sensible man in this nation, except Mr. Douglas, will doubt for a moment, that it places him and the court in an attitude of perfect antagonism.

But then he says he defended the court in more than *one hundred speeches*. It can scarcely be necessary to say, that arguments on a question of law are valued according to their *weight*, and not according to their *number*. The count of Mr. Douglas's speeches on the Illinois stump was, no doubt, faithfully kept; but, when he claims credit for their orthodoxy, he must show something more than scores on a tally paper. He might as well come, with his Harper article in one hand and a two-foot rule in the other, ready to demonstrate his concurrence with the court by showing that it contains two thousand eight hundred and eighty square inches of surface. Without reference to the *superficial* measure of one or the carefully *enumerated* repetitions of the other, we may safely presume that the *quality* of his spoken arguments was not better than that of his written essay; and in this latter Mr. Douglas not only opposes the court, but, what is much worse, he charges it with holding his opinions. This is a deep and serious injury; for, how would the judges of that great tribunal be able to look their country in the face, if *they* had ever said, that a power over private property, forbidden to the Federal Government, might be delegated by Congress to a territorial legislature?

The whole dispute (as far as it is a doctrinal dispute) between Mr. Douglas and the democratic party lies substantially in these two propositions: 1. The owner of a slave may remove with him, as with other property, into a Territory without forfeiting his title. 2. The government of a Territory has and can have no power to deprive the inhabitants of their private property, whether in slaves or anything else.

I. The "axiomatic principle of public law," that a man, going from one country into another, retains in the latter (if there be no conflicting law) all the rights of property which he had in the former, is so universally acknowledged, that nobody thinks worth while to prove it. At all times, in all countries, and by all persons it is taken and acted upon as a postulate. I certainly had not, until very lately, the remotest suspicion, that any man on this side of China would doubt it. All the intercourse between the States, and with foreign countries, depends on it. Without it, the traveller must lose all right to his trunk whenever he passes the border of his own State; and when a foreigner lands among us, he may be robbed of his purse by the first loafer that meets him on the wharf. Importation and exportation would cease, and the commerce of the whole world would suddenly come to a dead pause, if a man might not prove his right to personal property in one country by showing that he was the legal owner of it in another from whence he brought it. This principle is to the commercial world what the law of gravitation is to the material universe; it cannot be abolished without hurling the whole system into ruin.

Mr. Douglas does not admit this "axiomatic principle," nor does he deny it, though he writes a great deal about it. But he is unusually clear and explicit in his assertion that "it has no application to, and does not include, slavery." I insist that he is utterly mistaken. Slaves being recognised as property by the Constitution, and made so by the local laws of those States which have power to regulate their condition, there can be no constitutional or legal reason given for excepting them from the operation of a rule which applies to property in general. Mr. Douglas's argument in favor of such discrimination between slaves and other property is a total failure, and no plausible argument can ever be made on that side, except one founded on the "higher law," or the doctrines taught by that new religion, of which Saint Ossawattomie is the apostle and the martyr.

It has never been held, that any kind of property can be introduced into a State or Territory whose laws oppose the owner's right: a liquor-dealer in New York cannot take brandy to Portland if the Maine law forbids it. So a relation formed in one country must cease when the parties go to another, in which such a relation is illegal: a Turk may be the lawful husband of many wives in Constantinople, but he cannot keep them, if he changes his residence to Western Europe or to the American States. So it undoubtedly is with slavery: no man in his senses ever contended, that a Virginian, going to live in Pennsylvania, could take his slaves with him, and keep them there, in spite of the Pennsylvania law. But if he goes to Kentucky, where the law is not opposed to slavery, it is equally clear, that he retains all the dominion over them, which he had before his removal. The right of property, no matter where it accrued, continues to be sacred and inviolable until it comes in collision with a law which divests it. In a federal territory there can be no such collision with the right of a slaveholder, because there is no conflicting law there on that subject.

All authority, as well as all reason and common sense, is in favor of this doctrine. It was *the very point of the Dred Scott case*. Dred was the slave of Dr. Emerson, in Missouri, and was taken by his master to a federal territory, where there was no valid law which either expressly authorized or expressly interdicted the holding of slaves. The court held that Dred Scott's status in Missouri was not changed, nor the right of his master divested, by his removal to the Territory. The principle was applied to the case of a slave just as it would be applied to any other property. It is half a score of times repeated by the judges, that there can be no distinction between slave and other property. The other authorities to the same point are conclusive and overwhelming. Any person who desires to see all the learning of the subject may consult "*Cobb on Slavery*," where it is arranged in an order so lucid, and discussed with so much ability, that nothing further need be desired.

There is one other authority directly to the point which I cite, not only for its own intrinsic value, but because it will probably be esteemed very highly by Mr. Douglas himself. It is an extract from a speech of his own delivered in the Senate on the 23d of February last. The legal equality of slave property and other property was then asserted by him in the following fashion:

"Slaves, according to that decision, [the Dred Scott decision,] being property, stand on an *equal footing with all other property*. There is just as much obligation on the part of the territorial legislature *to protect slaves* as every other species of property, as there is to protect *horses, cattle, dry goods, liquors, &c.* If they have a right to discriminate as to the one, they have as to the other, and whether they

have got the power of discrimination or not, is for the court to decide, if any one disputes it. * * If there is no power of discrimination *on other species of property, there is none as to slaves.* If there is a power of discrimination as to other property—and I think there is—then it applies to slave property. In other words, *slave property is on an equal footing with all other property.*"

In the face of all this, in the teeth of his own words so recently uttered, in defiance of the Supreme Court and all judicial authority, Mr. Douglas now declares that the "axiomatic principle of public law" which enables a man to remove his property from place to place, wherever the local law does not forbid its coming, is not applicable to slaves. To sustain himself in making this distinction he produces two short passages, both of which have been picked out of one paragraph in Story's "Conflict of Laws." These passages (will the reader believe it?) merely show that a slave becomes free when taken to a country *where slavery is not tolerated by law!* Judge Story cites cases decided in England, France, Scotland, and Massachusetts, to prove, that the laws of those countries, being opposed to slavery, will dissolve the relation of master and slave when brought in contact with it. I say, that slaves may be taken to Kansas or Kentucky without being emancipated; Mr. Douglas, with great gravity and complacency, answers me, that I am wrong, because slavery is not tolerated in England or Massachusetts! No instance of a *non sequitur* so glaring and so palpable has ever before fallen under my notice.

Mr. Douglas forbears to burden his pages with "the long list of authorities" which he says are cited by Judge Story. It is a curious fact that not a single one of those authorities touches the question in controversy between us. They all, without exception, refer to cases in which there was a direct conflict between the law of the country where the slave came from, and the law of the country to which he was taken. No one of the writers referred to has outraged common sense by saying or hinting, that slaves are made free by mere removal without any such conflict of law. The quotation from the opinion of the Supreme Court in *Prigg* vs. *Pennsylvania* is made with the same rashness and with no nearer approach to the point.

The public will doubtless be somewhat surprised by Mr. Douglas's *unique* mode of dealing with books. For myself, I am inexpressibly amazed at it. I have no right to suppose, that he intended to insult the intelligence of his readers, or to impose upon their ignorance by making a parade of learning and research, which he did not possess. But how shall we account for quotations like those? I am obliged to leave the riddle unread.

II. Assuming that slaves taken from a slaveholding State into a Territory continue to be slaves, can the rights of their owners be afterwards divested by an act of the territorial legislature? They can certainly, if the Territories are sovereign states; if not, not. On this question Mr. Douglas has placed himself in a most peculiar position. Heretofore he has alternately affirmed and denied the sovereignty of the Territories. In his last pamphlet he seems to think the middle way safest; he admits that they are *not sovereign*, but asserts that they have "the *attributes* of *sovereignty.*" This is not at all ingenious. It must be apparent to the dullest understanding that a government, which has the attributes of sovereignty, is sovereign.

Sovereignty is the supreme authority of an independent State. No government is sovereign which may be controlled by a superior government. As applied to political structures, supremacy and sovereignty are convertible terms. To prove this I will not refer to "the primer of political science;" it is found in all the *horn books.* Every half-grown boy in the country who has given the usual amount of study to the English tongue, or who has occasionally looked into a dictionary, knows that the sovereignty of a government consists in its uncontrollable right to exercise the highest power. But Mr. Douglas tries to clothe the Territories with the "attributes of sovereignty," not by proving the supremacy of their jurisdiction in any matter or thing whatsoever, but merely by showing that they may be, and some of them have been, authorized to *legislate* within certain limits, to exercise the right of *eminent domain*, to lay and collect *taxes* for territorial purposes, to deprive a citizen of *life, liberty, or property* as a punishment for crime, and to *create corporations.* All this is true enough, but it does by no means follow that the provisional government of a Territory is, therefore, a sovereign in any sense of the word. A city council may legislate, but the city is still subordinate to the State which gave it political being. The right of eminent domain is delegated every day to private corporations, but no Turnpike Company pretends to be a sovereign State. The courts in many places have authority to create corporations, the sheriff of a county has power to imprison or hang malefactors, and the supervisors of a township can levy taxes; but I think no judge, sheriff, or supervisor has ever claimed the purple or the diadem on any such ground. Governments always act by their agents, but the agent, whether it be an individual officer or a political corporation, like a city or a Territory, is not in any case sovereign, supreme, and uncontrollable. Thus the arguments of Mr. Douglas, which he elaborates through page after page with wearisome pains, are but touched with the finger of investigation, and they disappear forever.

> "The earth hath bubbles, as the water has,
> And these are of them."

Mr. Douglas, the senator, the statesman, the struggling candidate for the presidency, should not have borrowed from the lawyerlings and small wits of the abolition party, the stale, often repeated, and worn-out assertion, that emigrants cannot have a right to the property they take with them, because it will introduce, into the Territory or State where they settle, all the conflicting laws of the different States from whence they came. Nothing could be less worthy of his high place in the councils of the nation. He ought to know that goods of various kinds are going continually into each State from all the other States of the Union, without producing any such effects. He *does* know that nearly all the personal property within the limits of a new Territory has come there from abroad under the protection of the axiomatic principle which he thinks proper to sneer at; and he never heard that any difficulty or confusion was produced by it.

I never said, that an immigrant to a Territory had a right to his property *without a remedy;* but I admit that he must look for his remedy to the law of his new domicil. It is true that he takes his life, his limbs, his reputation, and his property, and with them he takes nothing but his naked right to keep them and enjoy them. He leaves the judicial remedies of his previous domicil behind him. It is also true, that in a Territory just beginning to be settled, he may need remedies for the vindication of his rights above all things else. In his new home there may be bands of base marauders, without conscience or the fear of God before their eyes, who are ready to rob and murder, and spare nothing that man or

woman holds dear. In such a time it is quite possible to imagine an abolition legislature whose members owe their seats to Sharp's rifles and the money of the Emigration Aid Society. Very possibly a legislature so chosen might employ itself in passing laws *unfriendly* to the rights of honest men and *friendly* to the business of the robber and the murderer. I concede this, and Mr. Douglas is entitled to all the comfort it affords him. But it is an insult to the American people to suppose, that any community can be organized within the limits of our Union, who will tolerate such a state of things. If it shall ever come to that, Mr. Douglas may rest assured, that a remedy will be found. No government can possibly exist, which will allow the right of property to go unprotected; much less can it suffer such a right to be exposed to "unfriendly legislation."

Mr. Douglas thinks that a Territory may exclude slaves, or interfere with the rights of the owners, because, in some of the organic acts, the general grant is made of authority over "all rightful subjects of legislation." This is not the least unaccountable of his strange notions. In such an act nothing is taken by implication, nor could the power in question be given even by express words; for it is forbidden by the Constitution to the Federal Government itself. The logic so peculiar to Mr. Douglas, which infers the power to give from the want of possession, may sustain such a construction of a statute; but nothing else will.

A "plan" relating to the Territories was offered to Congress by Mr. Jefferson in 1784. It was a mere projet, in the form of resolutions, embodying certain abstract propositions in anticipation of settlements yet to be made in the wilderness. It did not establish any government, temporary or permanent, but provided how the settlers, when they would go there, might petition Congress and get themselves organized. There is not a word in any of the resolutions about sovereignty or slavery. They were passed in April, 1784, but three years afterwards they were repealed, the whole "plan" *was rejected by Congress*, and another plan totally different (the famous ordinance of 1787) was substituted in its place. Mr. Douglas, in Harper, referred to this plan, and expended column after column of dreary comment upon it. It was ridiculously inapplicable to his argument; like his quotation from Story, it had no more to do with the subject before him than the Edict of Nantes. I referred to it merely as showing how he could wander from the point. But he allows his righteous soul to be vexed at me for saying it was rejected. It *was* rejected; for though Congress assented to the resolutions when first offered, the plan was *repudiated before a single principle of it went into operation*. Mr. Douglas says that it "stood on the statute-book *unrepealed and irrepealable*." I take it for granted, that he would not have made such an allegation if he had known what I now tell him: that it was, in fact, repealed in 1787 by the unanimous vote of the whole Congress.—(Jour. Cong., vol. 4, page 754.)

I have regarded this dispute as on a question of constitutional law, far, very far, above party politics. But I am tempted to vindicate the democracy from the imputation which Mr. Douglas casts upon that party when he claims the Cincinnati platform as favoring his creed. It contains no word of the kind. I may also add, that every democrat who desires to preserve "the unity of the faith in the bonds of peace" will disapprove the odious charge which Mr. Douglas flings at the President, of agreeing with him on this subject. The calm, clear judgment of Mr. Buchanan was never for a moment imposed on, nor his love for the Constitution shaken, by this heresy. Neither in his Sanford letter, nor in his letter of acceptance, nor his Inaugural Address, nor in any other paper, public or private, did he ever give the remotest countenance to such doctrine. He has often said, that the people of the Territories had the right to determine the question of slavery for themselves, but he never said, nor intimated, that they could do so before they were ready to form a State constitution.

I will not follow Mr. Douglas any farther at present. But I must not be understood as assenting to the numerous assertions upon which I am silent. There is scarcely a sentence in this whole pamphlet, which does not either propound an error, or else mangle a truth. I do not charge him, however, with wilful misstatements of either law or fact.

J. S. B.

[Special Dispatch to the Cincinnati Enquirer Over the Union Line.]

Hon. Stephen A. Douglas AT WOOSTER.

15,000 PEOPLE PRESENT.

Enthusiastic Reception Along the Route.

10,000 PERSONS MEET HIM AT THE DEPOT.

WOOSTER, Friday, September 16.

To the Editor of the Enquirer:

Hon. Stephen A. Douglas arrived here at twelve o'clock to-day, and was met at the depot by some eight or ten thousand people, who greeted his appearance by the warmest demonstrations of gratification and regard. On the line of his route hither over the Pittsburg, Fort Wayne and Chicago Railway he was greeted with the most enthusiastic receptions. At nearly every station delegations of the people assembled and welcomed him with their plaudits. At Crestline the train was nearly three hours behind time, in consequence of the number of cars and the detentions; but the train for Wooster was detained through the courtesy of Superintendent Moore, to enable Judge Douglas to fulfill his appointment.

At Crestline the engines were doubled, and with a train of fifteen cars we proceeded more rapidly.

At Mansfield there was enthusiastic greeting. The arrival of the train was announced by a salute from a six-pounder, an excellent band of music, the plaudits of hundreds, and the waving of banners, on which was inscribed, "Douglas for President." At this point the brass field-piece, which had been mounted upon a platform-car, was attached to the rear of the train, and after a brief pause we went literally booming through the country toward the point of destination.

At Wooster some eight or ten thousand people were awaiting the train, the arrival of which, with its distinguished passenger, was greeted with a national salute, the waving of banners, the music of three or four bands and the huzzas of thousands.

Judge Douglas, with Judge Ranney, Senator Pugh and members of the Democratic State Committee, were escorted to carriages in waiting, and proceeded to the stand erected for the occasion, about a mile distant, followed by at least ten thousand persons, who made the welkin ring with their huzzas. The windows of the buildings along the streets were filled with ladies, who saluted the distinguished statesman

with the waving of handkerchiefs, which Judge Douglas gracefully acknowleged. People crowded around his carriage to take him by the hand, while cheer after cheer greeted him throughout the entire line of his triumphant march. It was an ovation which no public man has ever received under similar circumstances.

The town was alive with people, and an honest, earnest expression of regard was every-where manifested.

The speaker's stand was erected in a beautiful grove, and was surrounded by at least fifteen thousand persons, who were densely packed together in order to hear every word that fell from the lips of the honored guest of the Democracy.

Judge Douglas was introduced to the audience, and received with immense applause, the firing of cannon, and the music of the bands. When the "noise and confusion" had subsided, he proceeded to say that the demonstration which greeted him at the cars, reminded him of scenes in his own beloved Illinois. He fancied they were all the people of his favorite State, even Democratic hearts from Egypt. No man could have been received with more flattering marks of regard, which he would credit to the Democratic masses as evidence that they cherished, in all their purity, the principles which had so long governed the Democratic party of the country, the only political organization that could and would maintain the peace and harmony of the National Confederacy.

Declining to enter upon the discussion of purely local matters, Judge Douglas proceeded to discuss the great question of popular sovereignty, laying down the principle that, so far as slavery was concerned, it was simply a proposition whether it was a local or a Federal institution. The Democratic party maintained that it was local, and therefore subject to local laws, and not to the control of Federal legislation. To determine the question whether it was local or Federal it was only necessary to read the Constitution of the United States, and then administer to every man who denies the doctrine an oath to support the Constitution.

A slave was a person held to service or labor in a State under the laws of that State, and not by the Constitution of the United States, which provides who may be slaves, how they may be held, and how fugitives from service may be returned to their owners. Slaves were not held by laws of Congress, but by local legislation and popular will.

The Constitution recognized slavery as a local institution, existing by State authority and subject to be managed by State legislation. The people of a State or a Territory must decide for themselves as they had the right to do, whether they would have slavery or not. The people of Ohio had decided they did not want slavery, and that decision was final, but there their power ceases. They had no more right to interfere with slavery in Virginia than the people of that "mother of States" had the right to meddle with any domestic institution of the people of Ohio. If Virginians should interfere in your concerns, you would quickly tell them to recross the Ohio River and mind their own business, and if the Abolitionists of Ohio should cross the river to steal slaves or interfere with any local institution of Virginia, they would be sent back in double quick time, admonished to attend to their own affairs.

This is the great principle of popular sovereignty. If the North and the South would act upon this there would be peace and harmony between every State of the Union.

Governor Chase and father Giddings come now and then to Illinois, and in their speeches they proclaim the doctrine that the people of the Territories can not be trusted, that they will make bad laws, but these same philanthropists were willing that the Territories should legislate for themselves upon every other question but that of slavery. They could make laws good enough for the white men, but they were not to be trusted with the negro question.

They seemed to think a higher intelligence was necessary to govern the negro population, and they refuse to permit the Territorial Legislatures to pass laws to govern their own domestic concerns. No authority could be found in the Federal Constitution to authorize an interference in Territorial legislation.

Judge Douglas then briefly reviewed the first serious controversy between the colonies and the home government, which was in regard to the slavery question in Virginia, when that State, then a colony, asserted the right to say whether or not she would regulate slavery to suit herself. The king declared the colonies the common property of the empire, and that every Englishman had the right to carry his slaves to Virginia, and to hold them in defiance of local law.

The battles of the Revolution were fought upon that principle: the right of the colonies to govern their own internal concerns. They secured that right and proclaimed their independence.

The question was, whether American Territories now are not entitled to the same rights as the colonies under British institutions. Popular Sovereignty proclaimed that they were, and claimed no more than that. If we are not right now, then the Tories of the Revolution were right in resisting the action of the colonies.

The Republican party occupy precisely the same position, in regard to the rights of the Territories, that George III occupied toward the Colonies. They proclaim that Congress had sovereign power over the people of the Territories, and so did the King: their doctrines were identical. The Republicans assumed that the Territories were the property of the people of the States, because the Government owned the public lands. If that made the Territories property, then Ohio, Illinois, Wisconsin, Minnesota and other independent States, were alike the property of the Government, for the United States owned land in them all. But the fact was, that the people of a Territory were a political community of citizens, living upon their own lands, and competent to govern themselves. How long would it take the Republicans of the present day to unlearn the British doctrine, and learn the true republican principles of a free government?

The Democratic party claim the inalienable right of the people to govern themselves. When formed into political communities they claim no more than this. They do not expect sovereignty independent of the Government, but they claim that they have the same right to regulate their social relations that the Colonies had before the Revolution. The Constitution gives Congress no authority to interfere in the domestic concerns of the States or the Territories.

After discussing at considerable length the question of popular sovereignty and the rights of the people of a Territory, Judge Douglas took up the reply to his recent article in *Harper's Magazine*, which has been attributed to Judge Black, and asserted that if he was the author of that reply that it came from a man who wrote to the Democrats of Illinois to support Abolitionists for Congress in preference to the regular Democratic candidate.

Whether Judge Black was the author or not, the copy which he (Judge Douglas) held in his hand came to the gentleman who handed it to him in the cars, under the frank of that gentleman.

It asserted that the article in Harper contained an assault on the Federal Courts, but the author of this reply, no matter who he was, knew that he uttered a falsehood

During the last year's canvass in Illinois he (Judge Douglas) made one hundred and thirty speeches, and in every one of them he defended that Court. What then could be thought of a man who would prostitute a high office to deceive the American people?

Whoever the author of that reply was, he was a base calumniator. He knew it was a tissue of falsehoods from beginning to end. It was a falsehood, and the writer knew it to be such, that he (Judge Douglas) had ever advocated the doctrine that private property could be confiscated by any power on earth, except by due process of law. The author of that pamphlet asserts a double falsehood. It was a deliberate

attempt to misrepresent his position, unworthy of any man who claimed any respect for himself. It was a misrepresentation made for the purpose of attacking him, and weakening the force of the Democratic party.

He would not have noticed this attack but that it was aimed at the friends of popular sovereignty. It was intended to reach Judge Ranney, the noble standard-bearer of the Democratic party of Ohio; it was intended for the gallant Becker, the candidate for Governor in Minnesota; it was intended to strike at the eloquent Dodge, who was leading the Democratic hosts in Iowa; it was a stroke at the candidates of the Democracy throughout the country, who stand on the same platform of popular sovereignty. When the author of that pamphlet attempted to strike at that doctrine, he made a blow at the entire Democratic party of the North-west.

Judge Douglas quoted some further statements in the article of Judge Black, and pronounced them insidious falsehoods, put forth willfully and with bad intent.

He then proceeded to show the position of the Republican party in regard to the question of slavery; that they were pledged by all their speeches, by their political sermons in the pulpit, to come forward and repeal the slave code in New Mexico, and yet the people of that Territory themselves had decided to have slavery.

The Republicans would prevent their adopting such domestic regulations as they might deem just and proper. If the people of New Mexico had declared against slavery, no power on earth could have forced the institution upon them. They were free to choose, and they made their choice. Upon them should rest the responsibility.

A Republican in the crowd inquired whether slavery was a religious institution.

Judge Douglas replied, saying that he knew of no tribunal on earth that could try the question of the morality of slavery. He dealt with it as a question of public policy. If the people of Ohio believed slavery to be immoral and irreligious, they had a right to that opinion. If the people of Kentucky held to the opposite belief they should be free to express and exercise their opinion, without molestation.

When Kentucky had so decided, he would say to the questioner, "judge not lest ye be judged."

Mr. Douglas, in conclusion, exhorted the Democracy of Ohio to come up as one man to the support of their ticket, to put the State once more where she properly belongs, at the head of the Democratic column. Illinois stands the only Northern State that has never faltered; that has never failed to cast her vote for a Democratic President. She has never been conquered and, God willing, she never will be.

Give a little hope to the other States by redeeming Ohio from Republican rule. Ohio was entitled to the lead, bring her forth from Republicanism and Chaseism, and take your place at the head.

Mr. Douglas, with the remark that he always saved the best thing for the last, took Judge Ranney by the arm and introduced him to the assembled thousands as the next Governor of Ohio.

A wild huzza echoed back the prophesy.

Judge Douglas then retired amidst the cheering of the crowds, the firing of cannon and the music of some half-dozen bands.

He returned to town and took the train this evening for Washington, where he will remain until some time in October.

Judge Ranney made a marked impression upon the immense concourse in a speech of half an hour, which was followed by an eloquent address by Senator Pugh, who is speaking as I close my dispatch. H. S. W.

MR. DOUGLAS AND DR. GWIN.

Why was Senator Douglas Excluded from the Committee on Territories?

LETTER FROM MR. DOUGLAS TO CALIFORNIA.

To the Editors of the National, San Francisco, California:

I am indebted to the kindness of some unknown friend for a copy of the *National* of the 16th July, containing a speech of the Hon. WILLIAM M. GWIN, at Grass Valley, with black lines drawn around certain passages, for the purpose, I presume, of directing my attention especially to them. Inasmuch as your paper is the medium through which the assault on the political position which I have maintained in the Senate, and before the people of Illinois, was conveyed to the public, justice requires that you should publish such reply as my friends in California have a right, under the circumstances, to expect. Hence I address this letter to you.

After the defeat of the Lecompton Constitution in Congress, and the rejection by Kansas of the propositions contained in the "English bill," all who felt a deeper interest in the peace and repose of the country than in the advancement of particular individuals, entertained the hope that the strife had ended, and that instead of new and odious tests of political fidelity to distract and divide, we should witness mutual desires and mutual exertions to present a united Democracy. If this just expectation has been disappointed, and the Democratic Party, burdened with new tests and demoralized by selfish rivalries and dissensions, have been defeated in States where they should and otherwise might have been successful, the responsibility must rest upon those who produced the unfortunate results. I shall not follow the example of these disturbers of Democratic harmony by reviving past issues and indulging in criminations and recriminations; nor shall I stop to defend my action on the Lecompton question from their assaults. I am entirely content to rest my vindication on the verdict which the people of Illinois have already recorded, and trust to that enlightened public opinion of the whole country which will, sooner or later, declare with emphasis and power that no constitution or institution should ever be forced upon a reluctant people, whether State or Territory.

Passing from his review of the Lecompton issue, Mr. GWIN said in his speech at Grass Valley:

"Near the close of the last session of Congress, a debate was sprung upon the Senate upon the question of Territorial sovereignty. We had long expected such a discussion, because it was the duty of Mr. DOUGLAS to give his reasons to the Senate and to the country for the line of policy he had considered it his duty to adopt in the Senatorial canvass in Illinois. *The doctrines he had avowed in his Freeport speech had been condemned in the Senate by his removal from the Chairmanship of the Territorial Committee of that body*, and it was expected that he would defend the position he had taken, and give ample time to those who differed from him to give the reasons that had influenced them in removing him from that important position at the head of the Territorial Committee he had filled for so many years in the Senate. But for reasons satisfactory to himself, he did not address the Senate until near the close of the session, when there was no time to give the subject that full consideration it deserved. He had asserted in his Freeport speech that a Territorial Legislature could *lawfully* by non-action or hostile legislation exclude Slavery from such Territory. Having always opposed this doctrine, I briefly announced my previous opinions, and declared that if such construction had been given to the Kansas-Nebraska act when it was under consideration in Congress in 1854, I should have voted against it."

Why was it "the duty of Mr. DOUGLAS to give his reasons to the Senate, and to the country for the line of policy he had considered it his duty to adopt in the Senatorial canvass in Illinois." I had already given my "reasons" at Freeport, and at more than a hundred places during the canvass, and had been triumphantly sustained by the voice of the people and the vote of the Legislature, against the combined forces of the Black Republicans and Federal office-holders, and their allies and supporters in and out of the Senate. Why, I repeat, was it my duty to give my reasons to the Senate? The Senate is not my constituency. I am not responsible to the Senate, nor did any Senator venture to demand reasons for the line of policy which I have felt it my duty to pursue at home, in a State canvass.

But, if it *were* my duty, as Mr. GWIN states, to give my "reasons to the Senate" for the course which I pursued in the canvass, it necessarily follows, that it

was the duty of the Senate to hear them before they proceeded, as he alleges, to condemn me by my removal, during my absence, from the Chairmanship of Territories, which I have held for eleven years, and to which I was reëlected after my speech against the Lecompton Constitution.

The country is now informed, for the first time, that I was removed from the post of Chairman of the Committee on Territories because of the sentiments contained in my "Freeport speech." To use the language of Mr. GWIN, THE DOCTRINES HE HAD AVOWED IN HIS FREEPORT SPEECH HAD BEEN CONDEMNED IN THE SENATE BY HIS REMOVAL FROM THE CHAIRMANSHIP OF THE TERRITORIAL COMMITTEE OF THAT BODY. The country will bear in mind this testimony, that I was not removed because of any personal unkindness or hostility; nor in consequence of my course on the Lecompton question, or in respect to the Administration; but that it was intended as a condemnation of the doctrines avowed in my "Freeport speech." The only position taken in my "Freeport speech," which I have ever seen criticised or controverted, may be stated in a single sentence, and was in reply to an interrogatory propounded by my competitor for the Senate: That "*the Territorial Legislature could lawfully exclude Slavery, either by non-action or unfriendly legislation.*" This opinion was not expressed by me at Freeport for the first time. I have expressed the same opinion often in the Senate, freely and frequently, in the presence of those Senators who, as Mr. GWIN testifies, removed me "from the Chairmanship of the Committee on Territories" *ten years after they knew that I held the opinion and would never surrender it.*

I could fill many columns of the *National* with extracts of speeches made by me during the discussion of the Compromise measures in 1850, and in defence of the principle embodied in those measures in 1851 and 1852, in the discussion of the Kansas-Nebraska bill in 1854, and of the Kansas difficulties and the Topeka revolutionary movements in 1856, in all of which I expressed the same opinion and defended the same position which was assumed in the "Freeport Speech." I will not, however, burden your columns or weary your reader with extracts of all these speeches, but will refer you to each volume of the *Congressional Globe* for the last ten years, where you will find them fully reported. If you cannot conveniently procure the *Congressional Globe*, I refer you to an editorial article in the Washington *Union* of Oct. 5, 1858, which, it was reported, received the sanction of the President of the United States previously to its publication, a few weeks after my "Freeport Speech" had been delivered. The *Union* made copious extracts of my speeches in 1850 and 1854, to prove that at each of those periods I held the same opinions which I expressed at Freeport in 1858, and, consequently, declared that I never was a good Democrat, much less sound on the Slavery question when I advocated the Compromise measures of 1850, and the Kansas-Nebraska bill in 1854.

In the article referred to, the Washington *Union* said:

"We propose to show that Judge DOUGLAS' action in 1850 and 1854 was taken with especial reference to the announcement of doctrine and programme which was made at Freeport. The declaration at Freeport was, that 'in his opinion the people can, *by lawful means*, exclude Slavery from a Territory *before* it comes in as a State;' and he declared that his competitor had '*heard him argue the Nebraska bill on that principle* all over Illinois in 1854, 1855 and 1856, and had *no excuse to pretend to have any doubt on that subject.*'"

The *Union* summed up the evidence furnished by my speeches in the Senate in 1850 and 1854, that the "Freeport Speech" was consistent with my former course, with this emphatic declaration:

"*Thus we have shown that precisely the position assumed by Judge Douglas at Freeport had been maintained by him in 1850, in the debates and votes on the Utah and New-Mexican bills, and in 1854 on the Kansas-Nebraska bill; and have shown that it was owing to his opposition that clauses depriving Territorial Legislatures of the power of excluding Slavery from their jurisdictions were not expressly inserted in those measures.*"

The evidence thus presented by the Washington *Union*—the evidence of an open enemy—is so full and conclusive, that I have uniformly advocated for ten years past the same principles which I avowed at Freeport, that I cannot refrain from asking you to spread the entire article before your readers, as an appendix, if you choose, to this letter.

The question whether the people of the Territories should be permitted to decide the Slavery question for themselves the same as all other rightful subjects of legislation, was thoroughly discussed and definitely settled in the adoption of the Compromise measures of 1850. The Territorial bills, as originally reported by the Committee on Territories, extended the authority of the Territorial Legislature to all rightful subjects of legislation consistent with the Constitution, *without excepting African Slavery.* Modified by the Committee of Thirteen, they conferred power on the Territorial Legislature over all rightful subjects of legislation, *except African Slavery.* This distinct question, involving the power of the Territorial Legislature over the subject of African Slavery, was debated in the Senate from the 8th of May until the 31st of July, 1850, when the limitation was stricken out by a vote of yeas, 33; nays, 19; and the Territorial Legislature authorized to legislate on all rightful subjects, *without excepting African Slavery.* In this form, and upon this principle the compromise measures of 1850 were enacted.

When I returned to my home in Chicago, at the end of the session of Congress, after the adoption of the measures of adjustment, the excitement was intense. The City Council had passed a resolution nullifying the Fugitive Slave Act, and releasing the police from all obligations to obey the law or assist in its execution. Amidst this furious excitement, and surrounded by revolutionary movements, I addressed the assembled populace. My speech, in which I defended each and all of the compromise measures of 1850, was published at the time, and spread broadcast throughout the country. I herewith send you a copy of that speech, in which you will find that I said:

"These measures are predicated on the great fundamental principle *that every people ought to possess the right of forming and regulating their own internal concerns and domestic institutions in their own way.* It was supposed that those of our fellow-citizens who emigrated to the shores of the Pacific and to our other territories were as capable of self-government as their neighbors and kindred whom they left behind them; and there was no reason for believing that they have lost any of their intelligence or patriotism by the wayside, while crossing the Isthmus or the Plains. It was also believed, that after their arrival in the country, when they had become familiar with its topography, climate, productions and resources, and had connected their destiny with it, they were fully as competent to judge for themselves what kind of laws and institutions were best adapted to their condition and interests, as we were who never saw the country, and knew very little about it. To question their competency to do this, was to deny their capacity for self-government. If they have the requisite intelligence and honesty to be intrusted with the enactment of laws for the government of white men, I know of no reason why they should not be deemed competent to legislate for the negro. If they are sufficiently enlightened to make laws for the protection of life, liberty and property—of morals and education—to determine the relation of husband and wife, of parent and child—*I am not aware that it requires any higher degree of civilization to regulate the affairs of master and servant. These things are all confided by the Constitution to each State to decide for itself and I know of no reason why the same principle should not be extended to the Territories.*"

This speech was laid on the desk of every member of the Senate, at the opening of the second session of the Thirty-first Congress, in December, 1850, when, with a full knowledge of my opinions on the territorial question, I was unanimously nominated in the Democratic caucus, and reëlected by the Senate Chairman of the Committee on Territories. From that time to this I have spoken the same sentiments and vindicated the same positions in debate in the Senate; and have been reëlected Chairman of the Committee on Territories *at each session of Congress*, until last December, by the unanimous voice of the Democratic party in caucus, and in the Senate, with my opinions on this territorial question *well known to and well understood by every Senator.* Yet, Mr. GWIN testifies that I was condemned and deposed by the Senate for the utterance of opinions in 1858, which were put on record year after year, so plainly and so unequivocally, as to leave neither the Senate nor the country in doubt. Thus does Mr. GWIN, in his eagerness to be my public accuser, speak to his own condemnation, for he voted for me session after session, with my opinions, the same that I spoke at Freeport, staring him in the face.

On the 4th of January, 1854, I reported the Nebraska bill, and, as Chairman of the Committee on Territories, accompanied it with a special report, in which I stated distinctly "*that all questions pertaining to Slavery in the Territories, and in the new States to be formed therefrom, are to be left to the decision of the people residing therein, by their appropriate representatives to be chosen by them for that purpose.*" And, that the bill proposed "to carry these propositions and principles into practical operation in the precise language of the Compromise Measures of 1850." The Kansas-Nebraska Act, as it stands on the statute book, does define the power of the Territorial Legislature "in the precise language of the Compromise Measures of 1850." It gives the Legislature power over all rightful subjects of legislation consistent with the Constitution, *without excepting African Slavery.* During the discussion of the measure it was suggested that it was necessary to repeal the 8th section of the act of the 6th of March, 1850, called the Missouri Compromise, in order to permit the people to control the Slavery question, *while they remained in a territorial condition, and before they became a State of the Union.* That was the object and only purpose for which the Missouri Compromise was repealed.

On the night of the 30 of March, 1854, in my closing speech on the Kansas-Nebraska Bill, a few hours before it passed the Senate, I said: "*It is only for the purpose of carrying out this great, fundamental principle of self-government, that the bill renders the 8th section of the Missouri act inoperative and void.*" The article of the Washington *Union*, of Oct. 5, 1858, to which I have referred, quotes this and other passages of my speech on that occasion, to prove that the author of the Nebraska Bill framed it with express reference to conferring on the Territorial Legislature

power to control the Slavery question; and further, that I boldly avowed the purpose at the time in the presence of all the friends of the bill, and urged its passage upon that ground. I have never understood that Mr. GWIN, or any other Senator who heard that speech and voted for the bill the same night, expressed any dissent or disapprobation of the doctrines it announced. That was the time for dissent and disapprobation; that was the time to condemn, if there were cause to condemn, and not four or five years later. The record furnishes no such evidence of dissent or disapprobation; nor does the history of those times show that the Democratic Party in the North or in the South, or in any portion of the country, repudiated the fundamental principle upon which the Kansas-Nebraska act is founded, and proscribed its advocates and defenders.

If Mr. GWIN did not understand the Kansas-Nebraska bill when it was under consideration, according to its plain meaning, as explained and defended by its authors and supporters, it is not the fault of those who did understand it precisely as I interpreted it at Freeport, and as the country understood it in the Presidential canvass of 1856. Mr. BUCHANAN, and leading members of his Cabinet, at all events, understood the Kansas-Nebraska act in the same sense in which it was understood and defended at the time of its passage. Mr. BUCHANAN, in his letter accepting the Cincinnati nomination, affirmed that "this legislation is founded upon principles as ancient as free government itself, and in accordance with them has simply declared that the *people of a Territory*, LIKE THOSE OF A STATE, *shall decide for themselves whether Slavery shall or shall not exist* within their limits." Gen. CASS, now Secretary of State, has always maintained, from the day he penned the "Nicholson letter" to this, that the people of the Territories have a right to decide the Slavery question for themselves, whenever they please. In 1856, on the 2d day of July, referring to the Kansas-Nebraska act, he said: "*I believe the original act gave the Territorial Legislature of Kansas* FULL POWER *to exclude or allow Slavery.*" Mr. TOUCEY, the Secretary of the Navy, interpreted the act in the same way, and on the same occasion in the Senate, said: "The original act recognizes in the Territorial Legislature all the power which they can have, subject to the Constitution, and subject to the organic law of the Territory." Mr. COBB, the Secretary of the Treasury, in a speech at West Chester, Pennsylvania, on the 13th of September, 1856, advocating Mr. BUCHANAN'S election to the Presidency, said: "The Government of the United States should *not* force the institution of Slavery upon the people either of the Territories or of the States, against the will of the people, though my voice could bring about that result. I stand upon the principle;—the people of my State decide it for themselves, you for yourselves, the people of Kansas for themselves. That is the Constitution, and I stand by the Constitution." And, again; in the same speech he said: "Whether they" (the people of a Territory) "*decide it by prohibiting it, according to the one doctrine*, OR BY REFUSING TO PASS LAWS TO PROTECT IT, as contended for by the other party, *is immaterial. The majority of the people* BY THE ACTION OF THE TERRITORIAL LEGISLATURE *will decide the question;* and all must abide the decision when made."

Here we find the doctrines of the Freeport speech, including "non-action" and "unfriendly legislation" as a lawful and proper mode for the exclusion of Slavery from a Territory, clearly defined by Mr. COBB, and the election of Mr. BUCHANAN advocated on those identical doctrines. Mr. COBB made similar speeches during the Presidential canvass in other sections of Pennsylvania, in Maine, Indiana, and most of the Northern States, and was appointed Secretary of the Treasury by Mr. BUCHANAN, as a mark of gratitude for the efficient services which had been thus rendered. Will any Senator who voted to remove me from the Chairmanship of the Territorial Committee, for expressing opinions for which Mr. COBB, Mr. TOUCEY and Gen. CASS were rewarded, pretend that he did not know that they, or either of them, had ever uttered such opinions when their nominations were before the Senate? I am sure that no Senator will make so humiliating a confession. Why, then, were those distinguished gentlemen appointed by the President and confirmed by the Senate as Cabinet Ministers, if they were not good Democrats—sound on the Slavery question, and faithful exponents of the principles and creed of the party? Is it not a significant fact, that the President and the most distinguished and honored of his Cabinet should have been solemnly and irrevocably pledged to this monstrous heresy of "Popular Sovereignty," for asserting which the Senate, by Mr. GWIN'S frank avowal, condemned me to the extent of their power?

It must be borne in mind, however, that the President and members of the Cabinet are not the only persons high in authority who are committed to the principle of self-government in the Territories. The Hon. JOHN C. BRECKINRIDGE, the Vice-President of the United States, was a member of the House of Representatives when the Kansas-Nebraska bill passed, and in a speech delivered March 23, 1854, said:

"Among the many misrepresentations sent to the country by some of the enemies of this Bill, perhaps none is more flagrant than the charge that it proposes to legislate Slavery into Kansas and Nebraska. Sir, if the bill contained such a feature it would not receive my vote. The right to establish involves the correlative right to prohibit, and denying both, I would vote for neither. * * * * "The effect of the repeal (of the Missouri Compromise) therefore, is neither to establish nor to exclude, *but to leave the future condition of the Territories dependent wholly upon the action of the inhabitants*, subject only to such limitations as the Federal constitution may impose." * * * * "It will be observed, that *the right of the people to regulate in their own way* ALL THEIR DOMESTIC INSTITUTIONS *is left wholly untouched*, except that whatever is done must be done in accordance with the Constitution—the supreme law for us all."

Again, at Lexington, Ky., on the 9th of June, 1856, in response to the congratulations of his neighbors, on his nomination for the Vice-Presidency, Mr. BRECKINRIDGE said:

"The whole power of the Democratic organization is pledged to the following propositions: That Congress shall not interpose upon this subject (Slavery) in the States, in the Territories, or in the District of Columbia; *that the people of each Territory shall determine the question for themselves*, and be admitted into the Union upon a footing of perfect equality with the original States, without discrimination on account of the allowance or prohibition of Slavery."

Touching the power of the Territorial Legislature over the subject of Slavery, the Hon. JAMES L. ORR, late Speaker of the House of Representatives, on the 11th of December, 1856, said:

"*Now, the Legislative authority of a Territory is invested with a discretion to vote for or against the laws.* We think they ought to pass laws in every Territory, when the Territory is open to settlement, and slaveholders go there to protect slave property. But if they decline to pass such laws, what is the remedy? *None. Sir. If the majority of the people are opposed to the institution, and if they do not desire it engrafted upon their Territory, all they have to do is simply to pass laws in the Territorial Legislature for its protection, and then it is as well excluded as if the power was invested in the Territorial Legislature to prohibit it.*"

Mr. STEPHENS, of Georgia, in a speech in the House of Representatives, on the 17th of February, 1854, said:

"The whole question of Slavery was to be left to the people of the Territories, whether North or South of 36° 30', or any other line. * * * It was based upon the truly republican and national policy of taking this disturbing element out of Congress, and leaving the whole question of Slavery in the Territories to the people there to settle it for themselves. And it is in vindication of that new principle—then established for the first time in the history of our Government—in the year 1850, the middle of the Nineteenth Century, that we, the friends of the Nebraska bill, whether from the North or South, now call upon this House and the country to carry out, in good faith, and give effect to the spirit and intent of those important measures of territorial legislation."

Again, on the 17th of January, 1856, he said:

"I am willing that the Territorial Legislature may act upon the subject when and how they may think proper."

Mr. BENJAMIN, of Louisiana, in a speech in the Senate on the 25th of May, 1854, on the Nebraska bill, said:

"We find, then, that this principle of the independence and self-government of the people in the distant Territories of the confederacy, harmonizes all these conflicting opinions, and enables us *to banish from the halls of Congress another fertile source of discontent and excitement.*"

On the 15th day of February, 1854, Mr. BADGER, of North Carolina, said of the Kansas-Nebraska bill:

"It submits the whole authority to the Territory to determine for itself. That, in my judgment is the place where it ought to be put. *If the people of the Territories choose to exclude Slavery, so far from considering it as a wrong done to me or my constituents, I shall not complain of it. It is their business.*"

Again, on the 2d of March, 1854, one day before the passage of the bill through the Senate, Mr. BADGER said:

"But with regard to that question we have agreed—some of us because we thought it the only right mode, and some of us because we think it a right mode, and under existing circumstances the preferable mode—*to confer this power upon the people of the Territories.*"

On the same day, Mr. BUTLER, of South Carolina, said:

"Now, I believe that under the provisions of this bill, and of the Utah and New-Mexico bills, there will be a perfect *carte blanche* given to the Territorial Legislature to legislate as they may think proper." * * * * * "I am willing to trust them. I have been willing to trust them in Utah and New-Mexico, where the Mexican law prevailed, and I am willing to trust them in Nebraska and Kansas, where the French law, according to the idea of the gentleman, may possibly be revived."

In the House of Representatives, on the 25th of June, 1856, Mr. SAMUEL A. SMITH, of Tennessee, said:

"For twenty years this question has agitated Congress and the country without a single beneficial result. They resolved that it should be transferred from these halls, that all unconstitutional restrictions should be removed, and that the people should determine for themselves the character of their local and domestic institutions under which they were to live, *with precisely the same rights, but no greater than those which were enjoyed by the old thirteen States.*" And, further: "In 1854, the

same question was presented, when the necessity arose for the organization of the Territories of Kansas and Nebraska, and the identical principle was applied for its solution."

In the Senate, on the 25th of February, 1854, Mr. Dodge of Iowa (now Democratic candidate for Governor of that State, said:

"And, Sir, honesty and consistency, with our course in 1850, demand that those of us who supported the Compromise measures should zealously support this bill, because it is a return to the sound principle of leaving to the people of the Territories the right of determining for themselves their domestic institutions."

And in the House of Representatives, on the 28th of December, 1855, Mr. George W. Jones, of Tennessee said:

"Then, Sir, you may call it by what name you please—non-intervention, squatter sovereignty, or popular sovereignty. *It is, Sir, the power of the people to govern themselves, and they, and they alone, should exercise it, in my opinion, as well while in a Territorial condition as in the position of a State.*"

And, again in the same speech, he said:

"I believe that the great principle—the right of the people in the Territories, as well as in the States, to form and regulate their own domestic institutions in their own way—is clearly and unequivocally embodied in the Kansas-Nebraska Act, and if it is not, it should have been. Believing that it was the living vital principle of the act, I voted for it. These are my views, honestly entertained, and will be defended."

I could fill your columns with extracts of speeches of senators and representatives from the North and the South, who voted for the Kansas Nebraska Bill, and supported Mr. Buchanan for the Presidency on that distinct issue—thus showing, conclusively, that it was the general understanding at the time, that the people of the Territories, while they remained in a territorial condition, were left perfectly free, under the Kansas-Nebraska act, to form and regulate all their domestic institutions, Slavery not excepted, in their own way—subject only to the Constitution of the United States. This is the doctrine of which Mr. Gwin spoke, when he said:

"To contend for the power—and a sovereign power it is—of a territorial legislature to exclude by non-action or hostile legislation, is pregnant with the mischiefs of never-ending agitation, of civil discord and bloody wars.

* * * * * *

It is an absurd, monstrous and dangerous theory, which demands denunciation from every patriot in the land; and a profound sense of my duty to you would not permit me to do less than to offer this brief statement of my views upon a question so vital to the welfare of our common country."

Why did not the same "profound sense of duty" to the people of California require Mr. Gwin to denounce this "absurd, monstrous and dangerous theory" when pronounced and enforced by Gen. Cass, in his Nicholson letter in 1848, and in support of the Compromise Measures of 1850, and thence repeated by that eminent statesman at each session of Congress until 1857, when Mr. Gwin voted for his confirmation as Secretary of State? Why did not Mr. Gwin obey the same sense of duty by denouncing James Buchanan as the Democratic candidate for the Presidency, when he declared in 1856, that "the people of a Territory, like those of a State, should decide for themselves whether Slavery shall or shall not exist within their limits?" Why did he not perform this imperative duty by voting against Mr. Cobb, who made Northern votes for Mr. Buchanan by advocating this same "absurd, monstrous and dangerous theory of 'non-action' and 'unfriendly legislation,'" when he was appointed Secretary of the Treasury? And, in short, why did he not prove his fidelity to a high sense of duty by protesting against my selection as Chairman of the Senate's Committee on Territories in the Democratic caucus by a *unanimous vote*, at every session that he has been a Senator, from 1850 to 1856, *with a full knowledge of my opinions?* The inference is that Mr. Gwin, from his remarks on the "Dred Scott Decision," is prepared to offer it as an excuse for the disregard, for so many years, of that profound sense of duty which he owed to the people of California. It may be that before the decision his mind was not clear as to the sense of duty which now moves him. Of that decision he said:

"In March, 1857, the Supreme Court decided this question in all its various relations, in the case of Dred Scott. That decision declares that neither Congress nor a Territorial Legislature possess the power either to establish or exclude Slavery from the Territory, and that it was a power which exclusively belonged to the States: that the people of a Territory can exercise this power for the first time when they form a Constitution; that the right of the people of any State to carry their slaves into a common Territory of the United States, and hold them there during its existence as such, was guaranteed by the Constitution of the United States; that it was a right which could neither be subverted nor evaded, either by non-action, by direct or indirect Congressional legislation, or by any law passed by a Territorial Legislature."

Surely, Mr. Gwin had never read the opinion of the Court in the case of "Dred Scott," except as it has been perverted for partisan purposes by newspapers, when he undertook to expound it to the good people of California. *It so happens, that the Court did not decide any one of the propositions so boldly and emphatically stated in the "Grass Valley" speech!* The Court did *not* declare, that "neither Congress nor a Territorial Legislature possessed the power either to establish or exclude Slavery from a Territory, and that it was a power which exclusively belonged to the States." The Court did *not* declare "that the people of a Territory can exercise this power for the first time when they come to form a Constitution." The Court did *not* declare "that the right of the people of any State to carry their slaves into a common Territory of the United States, and hold them there during its existence as such, was guaranteed by the Constitution of the United States." The Court did not declare "that it was a right which could neither be subverted nor evaded, either by non-action, by direct or indirect Congressional legislation, or by any law passed by a Territorial Legislature." Neither the decision nor the opinion of the Court affirms any one of these propositions, either in express terms or by fair legal intendment.

The *version* of the "Dred Scott Decision" had its origin in the unfortunate Lecompton controversy, and is one of the many political heresies to which it gave birth.

There are other portions of Mr. Gwin's speech which are equally open to just criticism and unwarranted by the facts to which they relate; but I refrain from commenting upon them, as I prefer to confine myself to those points upon which my political action, in common with that of a large majority of the Democratic Party, has been unjustly assailed before the people of California.

In faithful compliance with the pledges, creed and platform of the Democratic Party, I stand now as I did in 1850, in 1854, and in 1856, by the great cardinal principle that, under our political system, every distinct political community, loyal to the Constitution and the Union, is entitled to all the rights, privileges and immunities of self-government, in respect to their internal polity and domestic institutions, subject only to the Constitution of the United States.

Respectfully, your obedient servant,

S. A. DOUGLAS.

N. Y. Times.

ANOTHER REVIEW OF JUDGE BLACK.

The Rights of the Federal Government and the States in the Territories—Judge Black's Theory Examined.

The Attorney-General, on behalf of the Administration, has recently published an opinion upon this subject. The paper is important mainly on account of its acknowledged official character. The matter discussed, embracing the question of Slavery in its relations to the Federal Government, the States and the Territories, has absorbed far more than its share of public attention. It has, in fact, been seized upon and made the foundation of one of the great parties of the country.

In a legal sense it involves the question of self-government of the Territories, the powers of Congress, and the rights of the States therein. Experience teaches us that its agitation is utterly fruitless of good, while it is known to have produced the most appalling political evils. In point of fact we entertain no doubt whatever but that the Territories will continue to govern themselves, and are equally confident that it is not in the power of Congress to prevent it. We feel certain, too, that slaveholders will suffer no important sacrifices on account of Territorial legislation, because they will not risk their property in the midst of a hostile public opinion. The question is, indeed, almost purely theoretical—a mere abstraction—scarcely more than the foot-ball of party.

But after all is said in the way of remonstrance against it, in this way we must not overlook the fact that it has largely engaged public attention for a quarter of a century, and is honestly regarded by many as really involving important questions of right and wrong between the free and the Slave States. So long as it is thus estimated, no matter what may be its real character, it will be the duty of the Press to discuss it in an impartial, philosophical and candid manner.

Had the Attorney-General confined himself to a refutation of the elaborate article recently put forth by Senator DOUGLAS, against which his paper is mainly directed, we should not have engaged in the discussion. But he has gone to the extent of proclaiming the law on the whole subject, and in a manner so pregnant with authority, as to make it difficult to realize that he was not framing public institutions instead of expounding them. Convinced that he has committed the Democratic Party, to the extent of his authority, to many fundamental errors, and above all, that he has used his official position to vitalize a question of no practical importance, and for strictly partisan objects, we shall give his views a candid examination.

"The people of a State," says Judge BLACK, "and the people of a Territory, in the Constitution which they may frame preparatory to their admission as a State, can regulate and control the condition of the subject black race within their respective jurisdictions, so as to make them bond or free;" adding, "But here we come to the point at which opinions diverge. Some insist that no citizen can be deprived of his property in slaves, or in anything else, *except* by the provision of a State Constitution or by the act of a State Legislature; while others contend that an unlimited control over private rights may be exercised by a Territorial Legislature as soon as the earliest settlements are made."

Judge BLACK proceeds to assign to Mr. DOUGLAS the last-named position; and declares that "the President, the Judges of the Supreme Court, nearly all the Democratic members of Congress, the whole of the Party South and a very large majority North, are penetrated with the conviction that no such power is vested in a Territorial Legislature, and that those who desire to confiscate *private property* of any kind, must wait *until* they get a Constitutional Convention or the machinery of a State Government into their hands."

It is no part of our purpose to inquire whether Senator DOUGLAS is here correctly represented or not. It is due, however, to the distinguished Senator, that we should say that on a recent occasion he employed the most emphatic language in denial of the position ascribed to him.

We shall be able to understand the exact views of the Attorney-General by invoking his definition of the rights of slaveholders and the character of slave property. He says:

"The Constitution regards as sacred all the rights which a citizen may legally acquire in a State." and, "If a man acquires property of any kind *in a State*, and goes with it into a Territory, he is not for that reason to be stripped of it." To those avowals he adds what he calls a "plain proposition, *that the legal owner of a Slave, or other chattel*, may go with *it* into a Federal Territory without forfeiting his title."

With this explicit definition of private rights, in which slave property is made to rest upon precisely the same basis as other property, we are prepared to deal with the position that the people of a Territory are prohibited from the exercise of all control over such rights, and that they "must *wait* until they get a Constitutional Convention, or the machinery of a State Government into their hands," in order to enable them "to confiscate private property of any kind."

In his anxiety to throw around slave property the extremest legal protection, we fear the Attorney-General has neglected properly to consider the other great private interests of the country, and, in this way has conceded altogether too much latitude to his favorite State sovereignties. Those who have studied the problem of free Government, and particularly the political system of the United States, in reference to the protection of private rights, cannot fail to be a little surprised at these views of the Attorney-General. They are to be ascribed, we apprehend, more to an intemperate desire to damage Senator DOUGLAS than to a candid and fair examination of the subject discussed. Be his as it may, we are safe in denying any political organization in this country the authority "to confiscate private property of any kind." The exercise of such authority would not only be at war with the personal security of the citizen, but incompatible with free Government itself. If, however, it is to be conceded at all, we venture the suggestion that it would be far more dangerous in the hands of the States than the Territories. The magnitude of the interests of the former, to say nothing of the greater social evils to grow out of its exercise, is more than enough to exhibit the folly of the proposition.

In denying the right of the Territories to control private property, and conceding it to the States, Judge BLACK discredits all his lessons on the subject of the personal security of the citizen. He does not object to the exercise of the power, except by the unskillful and inexperienced inhabitants of the new States. By this theory slaves are property; and "the machinery of State Governments" may determine whether the black race shall be bond or free. They may, then, control the ques-

tion of property so far as it exists in slaves; and, as Judge BLACK maintains explicitly, that, in legal contemplation there is no distinction between slave property and any other property, he is responsible for the position that the States may exercise unlimited control over all the private interests of society.

In order to support the distinction which is maintained between the authority of Territorial Governments and the authority of a State, we are led into an elaborate examination and exposition of the evils to result from conceding to the former the control of private rights. This is certainly a strange mode of legal investigation. It might have been very proper in the Convention to frame the Federal Constitution, where the question was one of expediency in respect to the authority to be conferred upon local Legislatures; but it was clearly out of place in the person of the Attorney-General of the United States, who undertook to determine, not what ought to have been the rule, but what is the true construction of existing laws. Judge BLACK was not engaged in framing a system, but in explaining the character of one made by others. The careful reader will see that Judge BLACK's law is based almost entirely upon his objections to conferring power upon the people of the new States. In this way he was driven to depreciate and misrepresent their character and habits. He paints a glo my picture indeed of the honors of these Legislatures—of rival and contending factions, stimulated by Northern and Southern antipathies—of scrife, rapine and plunder—of demoralization and anarchy, which, if at all truthful and historical, would go far to justify the repeal of all Territorial systems, and the utter annihilation of the whole frontier race as desperadoes and outlaws. But it so happens that the past which covers the incipient and permanent organization of more than half the States of the Union, and five times the area of its original members, has furnished us no such examples of rapine, plunder and robbery by Territorial Governments as the Attorney-General describes. If he will look a little more carefully into the history of his country—out of Pennsylvania—and especially into the character of the frontier people, he will find, even in his own political life, that States have been organized and have acquired a reputation for order, social excellence, and industrial enterprise and credit, quite equal to the Keystone of the arch itself. If the Atlantic States enjoy high degrees of prosperity, it is due to the integrity, economy and industry of the "new States." If the former have accumulated wealth, they are largely indebted for it to that very people who are placed so low on the scale of civilization by the Attorney-General. Pennsylvania is, perhaps, more indebted than any other State to the expansion of the West, for the development of its vast mineral and manufacturing resources.

We have no patience, indeed, with Judge BLACK's estimate of the people of the new States; and very little with his views touching the character and rights of Territorial Government. He may correctly portray the future, but he grossly exaggerates and misrepresents the past. Under his theory, governments organized over the new countries are little better than systems of plunder and robbery. To their operations, however, he does not object, so far as they affect every species of property except Slavery—that interest only demanding higher representative integrity and surer organic guarantees for its protection. If all property acquired in the States is in legal contemplation, of the same character, why intrust one species and withhold another from Territorial management? There is no foundation for such a distinction, and we want no better evidence of this than is furnished by Judge BLACK himself. A legal distinction, founded alone upon the policy of withholding from Territorial Governments the authority to control private rights, on the ground that the people are not sufficiently honest and intelligent to exercise it, is not well made. Nor does it derive additional strength from the elaborate depreciation and misrepresentation of their character and qualifications by one of the leading public officers. This rule of interpretation would convict a criminal on general testimony affecting his conduct, without the least regard to the statute law defining the offence committed. It would justify a debtor in withholding his effects, on the plea that he could manage them better than his creditor. It would substitute policy for law. We are, however, not called upon to consider what ought to have been the powers conferred upon the people of the Territories and upon Congress—the question is, What powers are conferred by the organic law of the Union?

We must take our complicated political system as we find it. Perfection in all the parts is not to be expected. The States may fail to discharge all their obligations under the Constitution. Congress has, doubtless, many times failed to perform all its duties to the States. We are amongst those who believe that, under this Government, there is no such absolutism as sovereign political rights—State, Federal or Territorial.

No one political community out of the two score or more which exist is or can be independent of the others. Congress may exercise only such powers as are conferred by the compact of union. The States are restricted by the concessions made to Congress; and the Territories, though limited to a narrower sphere, still possess independent political rights. Government in this country means something. In every case it is based upon the popular will, not even excepting the District of Columbia, which is a municipal government. Our entire system rests upon the idea of perpetuity. Once organized, no matter where, with legislative authority, and governed by laws fixing the relations and rights of its citizens, it cannot be suppressed, because it is the right of every people, a right based upon the principle of self-defence and self-preservation, to have a government. By the Kansas-Nebraska act the people of those Territories were authorized to establish governments. Congress reserved to the President the appointment of local Governors, and extended over them a federal judiciary. The governments thus ordained and warranted become permanent in character, though subject to certain organic changes. The repeal of the act of 1854 would not, in our opinion, deprive either of them of the essential attributes of government, or affect the rights of persons or property sanctioned by local legislation. We maintain, indeed, that all governments organized under republican forms enter at once into the general system, and become permanent and indestructible. Those of the Territories, in respect to this attribute, are not less so than the States. They possess general legislative authority, subject only to constitutional limitations, and do not differ essentially, in respect to local political rights, from the States themselves. The latte , by virtue of original authority, may exercise absolute discretion over the subject of Slavery; but they have no power to impair private rights, which it is the duty of all governments to protect, and the province of absolutism alone to destroy. Local communities represent the States in respect to federal property, and they are, by

every fair interpretation, bound to deal justly by the citizens of the States, even to the extent of protecting them in the possession of slave property, if they desire it. It must not be maintained, however, that because the people of the Territories derive their legislative authority from Congress, and, during their pupilage, represent the States, that therefore the latter may, at any time, either abrogate or annul such authority, or assume to exercise the functions of government therein. Having once delegated to the territorial people the right to establish their own political institutions, so long as they act within the scope of the Constitution, and maintain order and law, their governments exist *de facto et de jure*. They are not mere incorporations, limited to the exercise of commercial privileges—special charters created for the benefit of trade. They have a nobler mission in this great work of democratic rule; a higher significance and a more permanent character. They are the creations of the people. They constitute a part of the machinery of free government on this continent. They lie at the very foundation of our political institutions. There is not a member of this great confederacy, records of whose history do not run into territorial conditions, nor one whose government has undergone any essential modifications, so far as the local law is concerned, in assuming the government of what we call State sovereignty. We have an American law on this subject—a law which proclaims that political government in the United States—State and Territorial—as it is based upon the popular will, so is it permanent and indestructible.

But let us admit for the sake of the argument the position of Judge BLACK that "the Constitution regards as sacred all the rights which a citizen may legally acquire in a State." If the Constitution "regards" slaves as property, why limit the holder of it to the Territories? If it has the sanction of the supreme law, why not give it currency, if we may so speak, within the entire jurisdiction of that law? Again, if the Constitution "regards" slaves as property, no matter how it is acquired, why does Judge BLACK instruct us in another part of his paper that "the subject black race is neither bond nor free by virtue of any general law"? But the question recurs, even admitting the theory referred to, whether it is the right of any citizen to take his slaves to a Territory, and there claim protection for them which the States are not bound to render under like circumstances?

Equality of rights of all the people of the Union and of the States is a fundamental principle of the Government. The South invoke this principle as the basis of their claim to hold slaves in the Territories, on the ground that they are the common property of the States. The question is whether in applying it, for that purpose, they do not in fact acquire more than is consistent with the integrity of the rule they urge? If a citizen of a Slave State may take his slaves to the Territories, and exact protection for them, does he not acquire rights thereby which are denied to the people of the Free States? The former holds his property by virtue of the laws of Virginia, for instance; what property may a citizen of New-York hold in the Territories by virtue of the laws of New-York? Is it answered that the latter may purchase slaves in Virginia, transport them to Nebraska, and hold them as property? This does not remove the objection that the Slave States may under the rule urged exercise powers of government where the Free States are utterly excluded, thus establishing a constructive inequality which can be justified only by express constitutional authority. By this rule the right to hold slaves in the Territories attaches solely to the property acquired therein, and not to the persons who purchase them, because it singles out that species of property from all others, and gives it a currency which is denied to all other property. We see no way of removing this difficulty except by adopting at once the theory that the Constitution not only "regards" slaves as property, but *proprio vigore* establishes that relation in all the Territories of the Union.

It may be regarded as a little remarkable that the Constitution, in adjusting the relations and rights of the States and the people, without employing a word on the subject, should, by construction, be held to except slave property from all other property, and to have secured to it extraordinary immunities and rights. We do not believe that the framers of that compact intended to do more than settle general principles of government; certainly not to declare what is and what is not property in the hands of any individual in defiance of the local law. But if in this we are wrong, it follows that Congress possesses full authority to legislate on the whole subject.

But let us admit, for the purposes of the argument, that Judge BLACK'S theory of private rights is correct; that slaves acquired in the States may be taken to the Territories, and there held "like any other property,"—that by virtue of the common proprietorship of the members of the Union, the Slave States have authority to dictate what laws shall be enacted by the local governments on the subject of Slavery. The propriety, nevertheless, of exercising such control should be calmly considered. Policy may be said to counsel where principles command. Policy invites the mariner to take in sail on the approach of the storm. Policy counsels the general to accept or reject a battle tendered by the enemy. The exercise of policy is often necessary to give effect to principles, or save them from sacrifice. Is it sound policy to force Slavery upon a people who are opposed to it?

Territorial governments are temporary in their nature. The exercise, then, over them by the Slave States of superior rights with reference to the holding of slaves therein as property, must of necessity terminate when they are admitted into the Union. Is it worth while to enforce such rights against a hostile local opinion for objects so trifling and for a time so short? No candid man who has risen above the influence of the sectional strife which has so long degraded our political system will for a moment justify the policy of forcing Slavery upon such communities. If the South desire the expansion of Slavery, it is folly to waste energies upon its establishment over those countries where their legal control is so soon to terminate. If Slavery is a blessing, let those who would extend its influence confine their efforts to establish it where it can be maintained. What prudent man would build a house upon property the possession of which he could command only for a few months or years? Who would invest his money where the laws forbid the enforcement of obligations? What propriety is there in maintaining the right of a citizen to hold his slaves in a Territory the people of which are opposed to slavery? The answer is doubly conclusive: No sensible person will risk his property in such a place; and if he were to do so, he has no assurance, even upon the basis of the extremest Pro-Slavery construction of private rights, that it will not be taken from him by the machinery of a State Goverament. We hold the policy of enforcing Slavery upon an unwilling

people, then, to be nothing more nor less than political madness. There is not a grain of practical sense in it. It is far more damaging in its effects upon the South than upon the North. It brings the former into contempt, as it convicts them of fitful and spasmodic efforts to exercise power without the possibility of giving permanent effect to the principles which they profess to regard as important to their own welfare and to the common welfare of the whole country. It wastes their energies upon the reduction of a fortress which they have agreed to abandon on the very eve of their triumph.

We must not be misapprehended upon this point. We are discussing the policy of claiming the right by slaveholding States to hold slaves in those Territories the populations of which are acknowledged to be hostile to the institution of Slavery. We are condemning the effort which is being made to enforce Slavery upon such a people, even upon strictly legal grounds.

The repeal of the Missouri Compromise is justified, in our judgment, by the simple fact that it was an unconstitutional and purely sectional enactment. It proposed to create two governments, in fact; one for the North, where Slavery was prohibited, and one for the South, where it was permitted. It ordained positive inequalities between the North and the South; conceding to the latter absolute freedom, but imposing upon the former an odious dictation by an unwarranted Congress. In this view, the repeal of the act was demanded, on the principle of doing penance by the return of stolen goods. It was due to the integrity of the Union, the fundamental principles of which had been violated by the creation of an arbitrary line of distinction between the same people, thus recognizing the conflict of opposing forces in the same political family.

Had the Missouri Compromise been enacted upon competent authority, the South would have had no occasion to ask its repeal. It was a measure which, to a great extent, protected the South against the enormous preponderance of Northern and European emigration. The public Territories thrown open to free ingress, and there can be no question about the sectional party that will control them, especially up to the Missouri line, which was a wall that an adventurous few only were likely to overcome.

The Territories are open to general emigration. There is no power on earth that can change this law. It follows that public opinion in the Territories will be controlled by the character of emigrants, a large majority of whom are really hostile to Slavery. We may as well admit this much, and in admitting it we concede that a large majority of the new States now in process of formation will be what we call Free States, will send Free State representatives to Congress, and fix forever the opinions of that body touching the forced extension of Slavery.

If we are right in thus giving a practical view of the question of Slavery in the Territories, and in exhibiting the future character of Congress, it follows that the South have only to take one more step in their impolitic career of forcing the rights of slaveholders, and that is to appeal to Congress for protection of slave property, except under the extradition article of the Constitution, and they will have accomplished all the evil that a mistaken zeal for Slavery is capable of effecting. If Congress gains jurisdiction of the subject, on the application of the South, it is easy to see, at least, that the powers of that body will not be exercised for its benefit or advantage.

On the other hand, the South has no chance whatever of creating out of existing Territories, or those to be acquired, another Slave State, except on the principle of absolute non-intervention by Congress, and absolute territorial independence. Nothing is more certain than that Congress hereafter, no matter by what party controlled, will never undertake to extend Slavery in opposition to local public opinion, and if the power is conceded to that body, we would dislike to insure against its exercise in utter contempt of the wishes of any local community which might desire to establish slave institutions. In this view of the preponderance of the Free States in Congress, and of the character of immigrant opinions, we have no difficulty, as friends of peace and harmony in the whole country, without a single prejudice against Slavery as it exists, and consulting the highest interests, in fact, of slaveholders themselves, in arriving at the conclusion that the South, instead of the North, should be deadly hostile to Congressional intervention, and should insist, as upon a legal right, involving their protection in its enforcement and their ruin in its failure, upon the completest authority of all local communities to decide for themselves what shall be their domestic institutions.

Perhaps in the whole range of the subject discussed there is not a more profitless point of controversy than that which is involved in fixing the tenures of Slavery. The labors of the Attorney-General upon this branch of his argument are sufficiently original to invite examination. After declaring that the black race is neither bond or free by virtue of any general law, he defines the rule to be thus: "That portion of it (the black race) which is free, is free by virtue of some local regulation, and the slave owes service for the same reason." By this law the normal condition of the black race is that of servitude; certainly so if the portion of it which is free is free alone "by virtue of some local regulation." Judge Black has left us in no doubt of his meaning by adding the concluding words of the sentence quoted, "and the slave owes service for the same reason." What reason? Because he is not included in that portion of the race made free by "local regulation." It is not often that controversies are so nicely balanced as to leave the wrong all on one side and the right all on the other; but we believe the Attorney-General has, for once at least, presented such an example. Had he defined the rule to be precisely the reverse of that laid down, he would have effected a nearer approach to the truth. Let us rearrange the commentary and make it read: "That portion of the Black race bound to service is held by virtue of some local regulation; and that portion of it which is free, is free because the local law has not enslaved it." Slavery exists solely by virtue of the local law,—and we respectfully suggest that it would promote the highest interest of slaveholders and add to their permanent security if they would confine it to the local governments which have the power to establish it. Neither the Federal nor State Governments have the power, at all events, to control the subject beyond the period of admission into the Union of the new States; a fact which, in the minds of sensible men, will go far to condemn the policy of forcing Slavery into the midst of hostile local opinions, and to justify the doctrine of Congressional non-intervention and self-government in the Territories.

All that is said against the policy of intrusting the control of private rights to Territorial bodies and in defence of the States as the safer guardians thereof, has very little force. The people, in point of fact, nowhere exercise that discretion at the polls which is presumed to constitute the governing principle of our elective system. A vast horde

of professional politicians, stimulated by interest ambition and habit, do more of the work of real government than the people themselves. They control elections and legislation, and expound and enforce laws. This class of persons, North and South, have made the "Slavery question" a real instead of an imaginary difficulty; and Judge BLACK has contributed his share to the work of keeping it alive, in the face of the fact that it was fast losing all interest as a practical matter of dispute between the two sections of the Union.

The policy of Judge BLACK, whether he so considers it or not, is certain to force on that "irrepressible conflict," of which we have heard so much "between the opposing forces" of Freedom and Slavery. This is evinced by his efforts to carry that institution into communities where he knows it can have only a sickly and temporary existence. There is no possible point of conflict between the Free and the Slave States so long as they are limited to their own jurisdictions; it is only by forcing the jurisdiction of the latter over distant communities that difficulties of a serious nature are engendered. And what is, in reality, the character of those communities that they should be governed by foreign laws and institutions? They are made up of the citizens of the old States. They are an educated, enterprising, active people. They have had experience in the affairs of Government. They maintain social and political order. They administer upon estates; fix the relations of husband and wife, guardian and ward. They organize schools and churches; they build cities, regulate the general business of the community, promote industry, punish crime and enforce obligations. The Kansas-Nebraska act, in organizing those Territories, left the people thereof perfectly free to form and regulate their own domestic institutions in their own way. Mr. BUCHANAN declared to the Cincinnati Convention which nominated him for the Presidency:

"This legislation is founded upon principles as ancient as free Government itself, and in accordance with them, has simply declared that *the people of a Territory, like those of a State*, shall decide for themselves whether Slavery shall or shall not exist within their limits."

Slavery was the only question raised. The issue of the canvass of 1856 had been made up between those who nominated Mr. FREMONT and those who nominated Mr. BUCHANAN upon that question alone. All other property interests were regarded as quite safe under the control of local Legislatures. In using this emphatic and explicit language Mr. BUCHANAN intended fully to indorse the principle of Territorial self-government, and to condemn and repudiate the whole scheme of Congressional intervention. It was not a question of policy with the nominee; it was a matter of principle—a "principle as ancient as free government itself." It would be unfair to hold Judge BLACK responsible for these opinions; but it is wholly just to hold Mr. BUCHANAN responsible for the paper of the Attorney-General. The latter was written under the eye of the President. It is, in fact, his revised opinions upon the whole subject. They differ widely from those uttered to the Cincinnati Convention, and our chief solicitude is to ascertain whether the judgment of the President was not very much better in 1856 than in 1859. We are certain it was, even to the extent of having been right in the former and utterly wrong in the latter year.

We have nothing to say about the inconsistency of the President in changing his views; but it might have been better to alter them from wrong to right than from right to wrong. We have no respect for that kind of consistency which maintains opinions at the expense of truth and justice; certainly none for that inconsistency which, in the pursuit of a partisan object, abandons both under like dictation.

As late as the 2d of July, 1858, Mr. TOOMBS, in the Senate, on the motion to refer the special message of the President communicating the Constitution of Kansas to the Committee on Territories, said:

"They [the people of Kansas] were left perfectly free *to make their own institutions*, without interference from Congress, which had assumed in 1820 the right to prescribe them and say that they should not. In 1820 Congress said: 'No matter if every man in Kansas, if every man in Minnesota desires his institution to suit himself on the subject of Slavery, he shall not be allowed to do so, but we will do it for them.' Congress assumed, as a matter of conscience, that it was its duty to do this for the people. To that we objected. *We denied the power and the policy.* Upon the question of power we have been maintained by the Courts, the expounders of the law; on the policy of the measure we have been defended by the highest tribunal known to the country, the people."

Mr. TOOMBS maintained the doctrine of Mr. BUCHANAN in 1856, the act referred to by the latter, and that Congress in disavowing its authority to legislate for the territories, declared, "that the people of a Territory, like those of a State, shall decide for themselves whether Slavery shall or shall not exist within their limits."

The Attorney-General, on the other hand, while he is emphatic in the declaration that "the Constitution does not establish Slavery in the Territories, nor anywhere else," and is equally explicit in the opinion that local Governments are powerless over the whole subject, insists that the States can, by virtue of their laws, not only create Slavery in all the Territories at the will of their citizens, but that the Federal Constitution protects and upholds it, when thus established, in defiance of the institutions which both Mr. TOOMBS and Mr. BUCHANAN concur in saying, the people were free to make. If the Attorney-General will so alter his "opinion" as to deny the power of the States or Territories to confiscate private property and insist that Slave property shall be regarded and held like any "other chattel," it will at least be consistent with itself if not entitled to the merit of logical and convincing argument.

Now let us examine for a moment the practical operation of the principle that the Territorial people "must wait till they get a Constitutional Convention or the machinery of a State Government into their hands" before they can exercise the powers which are reserved to the State.

About two years ago the people of Kansas adopted a Constitution, organized a State Government, and applied to Congress for admission into the Union. The application was resisted, on the ground that a majority of the people did not participate in the preliminary elections, and of fraud, which was alleged to have tainted the entire proceedings. Judge BLACK and his friends, including Mr. BUCHANAN, sustained the application, on the bases mainly, that it was the right of the people of Kansas to form and regulate their domestic institutions in their own way; that the alleged "majority" refused to vote, and thereby worked their own disfranchisement; that the right of the people being perfect, Congress could not go behind the election returns and determine whether frauds had been committed or not. The application was rejected. A year and a half has passed; thirty per cent. has been added to the population of the Territory; every department of its industry has been wonderfully advanced; large commercial cities have risen up therein; schools and churches organized; railroads constructed; order and law maintained. Notwithstanding these evidences of progress and enlightenment, it is now maintained, under the new theory, that the people of Kansas are incompetent, by reason of lack of experience, intelligence and integrity, to exercise the ordinary functions of government over their own rights of property; and that it is safer to intrust those rights to the control of a distant and foreign legislative body. By this rule the people of Kansas were honest, capable, worthy, and so invested with sovereign political power, that Congress could not even question the forms under which it was exercised in the year 1858; and without authority, dishonest, incapable and untrustworthy in the Fall of 1859. What a beautiful and harmonious system! To-day enfranchised, to-morrow disfranchised! All this is the operation of the same law, under the same Federal Administration, by the advice of the same law officer of the Government.

HISTORY VINDICATED:

A LETTER

TO THE HON. STEPHEN A. DOUGLAS ON HIS "HARPER" ESSAY.

MR. SENATOR: Your late magazine article on "Popular Sovereignty in the Territories" has already received adequate attention. That it has failed to conciliate opponents, but has rather increased their number and confirmed their resolution, is now evident. It has had this result both at the North and and at the South, and for a very intelligible reason. Most of the American People who have any purpose whatever, earnestly desire either that Slavery *should* or that it *should not* be enabled to diffuse itself through the Federal Territories, growing with the growth and being strengthened with the strength of the American Republic. Very few are indifferent to this overshadowing issue; few except professional politicians even affect to be. You preach, therefore, the gospel of indifference, of negation, of impotence, to mainly unwilling ears. I cannot feel, in reading your lucubration, that you believe it yourself. Think me not uncharitable, but answer to yourself this question: Suppose you were officially apprised that a majority of the Squatter Sovereigns of one of our Territories—we will say Utah, for example—had voted that the minority should be reduced to and held in Slavery for the benefit and in the service of such majority, and had proceeded to enforce that determination by fire and sword—would you, as a Senator, hesitate to decide and declare that this rapacious, iniquitous purpose must be resisted and defeated by the power of the Federal Government? I know you would not. You would, in that case, inevitably recognize and affirm the duty of Congress to maintain Justice in the Territories—to protect every innocent man in the peaceful enjoyment of the fair rewards of his own industry, and in the possession and enjoyment of Liberty, Family, and honestly acquired Property. The matter is too plain for argument, too certain for doubt. If, then, you uphold the right of some men to hold others as slaves in the Territories, you do it on the assumption that those ought to be masters and these slaves—that the Slave laws of Virginia or Texas have rightful force and effect in Kansas or New-Mexico—or on some other ground than the naked assumption of "Popular Sovereignty" in the Territories. That, you must allow me to tell you, is but a politician's dodge, devised in 1848 by Gen. Cass, under the spur of a pressing danger, an urgent necessity, and only accepted by those who discern in it a means of escape from similar perils—a handy neck-yoke to enable them to carry water on both shoulders. The Sovereignty you defer to is that of a political necessity, not that of the People of the Territories.

But I do not propose to traverse all the logical subtleties and hair-splitting distinctions of your late elaborate essay. I did, indeed, at one time cherish a strong desire to reply to it at length through the pages of the magazine which gave it to the world; but, on intimating that purpose to its editor, I was denied a hearing in his columns, though it was graciously intimated that a similar demand from one of "the *leading* Republicans" might perhaps be favorably considered. Of course, that puts me out of court; but whom does it let in? I cannot tell. Republicans are rather unused to being led; hence a natural scarcity of Republican leaders. Gov. Seward, to whom *you* seem willing to accord the character of a leader, is known to be absent in Europe, and not likely to return for two months yet; so is Mr. Sumner; other "leading Republicans" are hardly within easy reach of the documents essential to your systematic refutation. Yet it seems to me important that your misstatements of fact should be clearly exposed, even though the task should devolve on one so far from being a leader. Though the pages of *Harper* are shut against me, and those who have read your monstrous perversions of History will never see their exposure, I am impelled to undertake the task, confining myself strictly to the historical features of your essay.

Your fundamental proposition is this: The genius and spirit of our free institutions plainly require that the people of a Territory should be enabled and encouraged to establish and maintain Human Slavery on the soil of such Territory, if they see fit. The Republicans deny this, insisting that no Government has any right to deprive innocent human beings of their liberty, accounting and holding them the mere chattels of others. They deny the right of any Territorial Government to establish or uphold such Slavery, insisting that Congress is in duty bound to prohibit and prevent any such injustice and mischief in the Territories which are the common domain of the whole American People. On this main question, we are utterly, irreconcilably at variance. I do not propose to argue it, nor to review your arguments upon it. But you proceed to assert, and to make history uphold your assertion, that your doctrine is that of the Revolutionary Fathers—that the Revolution was made in its behalf—that it was paramount in the earlier and purer days of the Republic. On this point I take issue, and appeal to the indubitable records. Here is their testimony:

The IXth Continental Congress, under the Articles of Confederation, assembled at Philadelphia, Nov. 3, 1783, but adjourned next day to Annapolis, Md., where it was to have reconvened on the 26th, but a quorum was not obtained until Dec. 13th, and the attendance continued so meager that no important business was taken up until Jan. 13th, 1784. The Treaty of Independence and Peace with Great Britain was unanimously ratified on the 14th—nine States represented. The House was soon left without a quorum, and so continued most of the time—of course, doing no business—till the 1st of March, when the delegates from Virginia, in pursuance of instructions from the Legislature of that State, signed the conditional deed of cession to the Confederation of her claims to territory northwest of the Ohio River. New-York, Connecticut, and Massachusetts had already made similar concessions to the Confederation of their respective claims to territory westward of their present limits. Congress hereupon appointed Messrs. Jefferson of Virginia, Chase of Mary-

land, and Howell of Rhode Island, a Select Committee to report a Plan of Government for the Western Territory. This plan, drawn up by Thomas Jefferson, provided for the government of *all* the Western Territory, including that portion which had not yet been, but which, it was reasonably expected, would be, surrendered to the Confederation by the States of North Carolina and Georgia (and which now forms the States of Tennessee, Alabama and Mississippi), as well as that which had already been conceded by the more northern States. All this territory, acquired and as yet unacquired, Mr. Jefferson and his associates on this Select Committee proposed to divide into seventeen prospective or new (embryo) States, to each of which the Report gave a name, eight of them being situated below the parallel of the Falls of Ohio (Louisville, Ky.), and nine above that parallel—which is very nearly the boundary between the present Free and Slave States. To all these embryo or new States, the Committee proposed to apply this restriction:

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

April 19, this reported plan came up for consideration in Congress. Mr. Spaight of N. C. moved that the above-quoted passage be stricken out of the plan or ordinance, and Mr. Read of S. C. seconded the motion. The question was put in this form: "Shall the words moved to be stricken out stand?" and on this question the Ays and Noes were taken, and resulted as follows:

N. HAMPSHIRE	Mr. Foster	ay	Ay.
	Mr. Blanchard	ay	
MASSACHUSETTS	Mr. Gerry	ay	Ay.
	Mr. Partridge	ay	
RHODE ISLAND	Mr. Ellery	ay	Ay.
	Mr. Howell	ay	
CONNECTICUT	Mr. Sherman	ay	Ay.
	Mr. Wadsworth	ay	
NEW-YORK	Mr. De Witt	ay	Ay.
	Mr. Paine	ay	
NEW-JERSEY	Mr. Dick	ay	*
PENNSYLVANIA	Mr. Mifflin	ay	Ay.
	Mr. Montgomery	ay	
	Mr. Hand	ay	
MARYLAND	Mr. McHenry	no	No.
	Mr. Stone	no	
VIRGINIA	Mr. Jefferson	ay	No.
	Mr. Hardy	no	
	Mr. Mercer	no	
N. CAROLINA	Mr. Williamson	ay	Divided.
	Mr. Spaight	no	
S. CAROLINA	Mr. Read	no	No.
	Mr. Beresford	no	

*No quorum.

Here we find the votes *sixteen* in favor of Mr. Jefferson's restriction to barely *seven* against it, and the States divided *six* in favor to *three* against it. But the Articles of Confederation (Art. IX.) required an affirmative vote of a majority of all the States—that is, a vote of seven States—to carry a proposition; so this clause was defeated through the absence of one delegate from New-Jersey, in spite of a vote of more than two to one in its favor. Had the New-Jersey delegation been full, it must, to a moral certainty, have prevailed; had Delaware been then represented, it would probably have carried, even without New-Jersey. Yet it is of this vote, so given and recorded, but by you suppressed, that you say, in your account of the action of Congress on the bill, after amplifying on the ordinance as it passed, and claiming it as an indorsement of your views:

"The fifth article, which relates to the prohibition of Slavery after the year 1800, *having been rejected by Congress, never became a part of the Jeffersonian Plan of Government for the Territories*, as adopted April 23, 1784."

—Is this a statesman's reading of American History for the instruction and guidance of his countrymen? It certainly reminds me strongly of a blackleg turning up the knave from the bottom or middle of his pack as though it came from the top. Who could not prove anything he wished by such unscrupulous manipulation of his authorities?

—But there is no denying the fact that the last Continental Congress—that of 1787—*did* unanimously pass Nathan Dane's Ordinance for the Government of the Territory North-west of the Ohio, whereby Slavery is peremptorily excluded from said Territory in the following terms:

"There shall be neither Slavery nor involuntary servitude in the said Territory, otherwise than in punishment of crimes, whereof the parties shall be duly convicted."

How do you get along with this? I will quote your very words. You are seeming to argue that by the term "States," or "new States," the Congress of that day often implied what we now designate as Territories, and you say:

"The word 'States' is used in the same sense in the Ordinance of the 13th July, 1787, for the government of the territory north-west of the River Ohio, which was passed by the remnant of the Congress of the Confederation, sitting in New-York while its most eminent members were at Philadelphia, as delegates to the Federal Convention, aiding in the formation of the Constitution of the United States."

—Let us see about this: You give us your bare word for this belittling and setting aside of the Congress of 1787, as a mere "remnant." There may be those with whom your assertion suffices, but I prefer to look at the record.

The Ordinance of 1787 just referred to, and containing the inhibition of Slavery quoted above, passed Congress on the 13th of July; and, on recurring to the journals, I find the vote on its passage recorded as follows:

MASSACHUSETTS	Mr. Holten	ay	Ay.
	Mr. Dane	ay	
NEW-YORK	Mr. Smith	ay	Ay.
	Mr. Haring	ay	
	Mr. Yates	no	
NEW-JERSEY	Mr. Clark	ay	Ay.
	Mr. Scheurman	ay	
DELAWARE	Mr. Kearney	ay	Ay.
	Mr. Mitchell	ay	
VIRGINIA	Mr. Grayson	ay	Ay.
	Mr. Richard Henry Lee	ay	
	Mr. Covington	ay	
NORTH CAROLINA	Mr. Blount	ay	Ay.
	Mr. Hawkins	ay	
SOUTH CAROLINA	Mr. Kean	ay	Ay.
	Mr. Huger	ay	
GEORGIA	Mr. Few	ay	Ay.
	Mr. Baldwin	ay	

—Here was Virginia and every State south of her represented and voting—voting unanimously *Ay*. The only negative vote cast came from New-York. It is quite true that New-Hampshire, Rhode Island, Connecticut, Pennsylvania, and Maryland were not represented on this vote; but the first four of them had unanimously voted to sustain Mr. Jefferson's original restriction, and no man can doubt that they would have voted in 1787 as they did in 1784, now that even the Carolinas and Georgia had come over to the support of the policy of Restriction. The members absent from their seats in order to attend the sittings of the Convention at Philadelphia were Rufus King and Nathaniel Gorham of Massachusetts, William Samuel Johnson of Connecticut, Mr. Madison of Virginia, and C. Pinckney of South Carolina, and possibly one or two others whose names I have not detected—for I can find no list of the members of the Congress, save as I pick it up from page to page of the journal as they severally dropped in from day to day. That a few members of this Congress were transferred to seats in the Convention is true; but in no

single instance was a State left by such transfer unrepresented in Congress, nor is there a shadow of reason for supposing that the Slavery Inhibition embodied in the glorious Ordinance would have been struck out or modified had no Convention been sitting. What becomes, then, of your sneer at "the *remnant* of the Congress?"

—Here, then, we have two distinct declarations by overwhelming majorities of the Continental Congress in favor of the principle of Slavery Inhibition—the first, by more than two to one (though not enough to carry it under the Articles of Confederation) acting under the lead of Thomas Jefferson, backed by such men as Elbridge Gerry and Roger Sherman, assembled directly after the close of the Revolution, and while New-York was still held by a British army; the second, by a vote of eight States to none in the last Confederated or Continental Congress, sitting in New-York simultaneously with the Convention which framed our present Federal Constitution at Philadelphia. Here are two explicit affirmations by the Revolutionary Fathers of the right and duty of Congressional Inhibition of Slavery in the Territories. Can there be any honest doubt as to their views on the subject?

—But the Federal Constitution was framed and adopted: perhaps this abolished or modified the power over Slavery in the Territories claimed and exercised by the Continental Congress. Certainly, the presumption is strongly the other way; for the Constitution was framed to strengthen, not weaken, the Federal authority. Let us again consult the records:

The first Federal Congress convened at New-York, March 4, 1789; of its Members the following had been also Members of the Convention which had just before framed the Federal Constitution:

From New-Hampshire—John Langdon, Nicholas Gilman.
" *Massachusetts*—Elbridge Gerry, Caleb Strong.
" *Connecticut*—Wm. Sam'l Johnson, Roger Sherman, Oliver Ellsworth.
" *New-York*—Rufus King.*
" *New-Jersey*—William Paterson.
" *Pennsylvania*—Robert Morris, George Clymer, Thomas Fitzsimons.
" *Delaware*—George Read, Richard Bassett.
" *Maryland*—Daniel Carroll.
" *Virginia*—James Madison, jr.
" *Georgia*—William Few, Abr'm Baldwin.

*Elected to the Convention from Massachusetts.

—In this first Congress under the Federal Constitution, composed in large measure of the most eminent of the framers of that Constitution, Mr. Fitzsimons of Pennsylvania (himself a member also of the Convention), reported (July 16, '89) a bill to provide for the government of the Territory North-West of the Ohio, which was then read a first time; the next day had its second reading, and was committed; on the 20th was considered in Committee of the Whole, reported and engrossed; and on the 21st read a third time and passed without dissent. It was received that day in the Senate, and had its first reading; was read a second time on the 31st; was further considered Aug. 3d; and had its third reading next day, when it passed without a voice raised it. As you do not seem to have heard of this act, allow me to quote it. It is a good deal shorter and sweeter than your Nebraska bill, and refers to the same subject. Here it is:

AN ACT to provide for the government of the Territory north-west of the river Ohio:

Whereas, In order that the ordinance of the United States, in Congress assembled, for the government of the Territory north-west of the river Ohio, *may continue to have full effect*, it is requisite that certain provisions be made *so as to adapt the same to the present Constitution of the United States*:

Be it enacted, &c., That in all cases in which, by the said ordinance, any information is to be given or communication made by the Governor of said Territory to the United States in Congress assembled, or to any of their officers, it shall be the duty of the said Governor to give such information and to make such communication to the President of the United States; and the President shall nominate, and by and with the advice and consent of the Senate shall appoint, all officers which by the said ordinance were to have been appointed by the United States in Congress assembled, and all officers so appointed shall be commissioned by him; and in all cases where the United States in Congress assembled might, by the said ordinance, revoke any commission, or remove from any office, the President is hereby declared to have the same powers of revocation and removal.

§ 2. *And be it further enacted*, That in case of the death, removal, resignation, or necessary absence, of the Governor of the said Territory, the Secretary thereof shall be, and he is hereby, authorized and required to execute all the powers and perform all the duties of the Governor, during the vacancy occasioned by the removal, resignation, or necessary absence of the said Governor.

Approved Aug. 7, 1789. GEO. WASHINGTON.

—Are you reading, Mr. Senator? Here is the act passed by the first Congress under the Federal Constitution—James Madison, Roger Sherman, Rufus King, Elbridge Gerry, John Langdon, Robert Morris, and other eminent members of the Constitutional Convention being also members of this Congress—*to give full effect to the Ordinance* of '87 and to *adapt it to the Federal Constitution*—not one voice being raised from any quarter against either the avowed purpose or the especial provisions of the act. Do you doubt that Washington, Madison, Gerry, Sherman, &c., understood the Constitution which they had framed scarcely two years before? *This*, at least, was no "*remnant* of a Congress." *Its* members were not absent from their seats concocting a new Constitution. Why, then, in giving what purports to be a history of the action of Congress on this subject, do you ignore them and their act of '89? Are they beyond even *your* power of manipulation?

Yet once more, and I leave you to your reflections. The matter on which we are at variance is no vague abstraction but a grave practicality. Indiana Territory, embracing the State you now represent, and all else between the Ohio and the Mississippi except the State of Ohio, early evinced dissatisfaction with the Slavery Inhibition embodied in the Ordinance of '87 and kept in force under the act of '89. Her former settlers were nearly all immigrants from Slave States, and they hankered after negroes. They held a Convention in 1802—Gen. Harrison, their Governor, presiding—and memorialized Congress in favor of a temporary removal of the Slavery Inhibition. That memorial was presented to the Congress of 1802-3, Mr. Jefferson being then President, and Congress largely Republican. It was referred by the House to a Select Committee of three, two of them from the Slave States, John Randolph being Chairman. March 2, 1803, Mr. Randolph presented their unanimous Report, denying the prayer of the petioners, and saying that

"The Committee deem it highly dangerous and inexpedient to impair a provision wisely calculated to promote the happiness and prosperity of the north-western country," &c., &c.

Congress thought so, too, and refrained from any action on the subject.

The next year, the memorial aforesaid was referred to a new Committee—Cæsar Rodney of Del. Chairman—who (Feb. 17, 1804) reported *in favor* of the prayer of the petitioners. No use! the House took no action on the subject. Feb. 14, 1806, another Report was made—this time by Mr. Garnett of Va.—in favor of the temporary suspension prayed for; but Congress persisted in its policy of non-action. Feb. 12, 1807, a *third* Report was made—by Mr. Parke (Delegate) of Indiana—in favor of letting the squatter sovereigns of Indiana Territory have liberty to hold slaves therein for a limited term; but Congress still declined to take the subject up for consideration. Finally, a memorial of the Territorial Legislature of Indiana, asking permission to import and temporarily hold slaves, was submitted, Jan. 21, 1807, to the Senate, by which it was referred (Nov. 7) to a Select Committee, of which Mr. Franklin of N. C. was Chairman, who reported (Nov. 13) that "it is not expedient" to let up on the Slavery Restriction; and there the subject rested forever—the Indiana sovereigns having by this time become sick or ashamed of their negro-begging.—Why is it, Mr. Douglas, that we find no allusion to these efforts to evade or subvert the Ordinance of '87, and their uniform failure, in your *resumé* of the history of this subject? Why but because the facts are at deadly feud with your theory, and prove it the novel heresy it truly is? There were statesmen in Congress in 1802-7 who would gladly have procured a repeal or suspension of the Ordinance of '87, so far as it forbade the Extension of Slavery; there was not one—so far as I can discover—who denied the right of Congress to preclude such Extension. The doctrine which denies to Congress the right to inhibit Slavery in the Territories had its origin in the perplexities of a Presidential aspirant no longer ago than 1848. When office-seekers cease to have special need of it, it will die the death of the humbugs, and be buried in their open grave.

You speak of the antagonistic doctrine which confides the guardianship of Impartial Freedom in the Territories of the United States to the whole people as represented in the Congress of the United States rather than to the few thousands of their number who first gain a footing on these Territories as strife-breeding, feud-inciting, as between diverse sections of the Union. History does not sustain that imputation. The Ordinance of '87 and the Missouri Restriction successively secured to the country long terms of comparative rest from Slavery agitation. The Nebraska bill has given us —what you see. It has distracted not merely the country but the Democratic party. Even *you* give three several interpretations of the spirit and drift of that act, and of the "Popular Sovereignty" which it embodies, as held by different sections of that party. Mr. Senator! allow me to say in conclusion that of these diverse interpretations your seems to me the most unsatisfactory and irritating. I comprehend, I regard with a certain respect, the Fire-eater who tells me—"The Constitution guarantees me the right "of taking slaves into the Territories and holding "them there: I demand of Congress such legisla-"tion as will render that right impregnable;" I trust he comprehends and respects me when I respond: "The Constitution gives you *no* right to "carry Slavery into the Territories; wherefore I "shall endeavor to keep it out, and will favor no "such legislation as you require;" but how can either of us respect you—how can you respect yourself—when you say in effect: "True, you slave-"holders have a right to fill the Territories with "your slaves; but the squatter sovereigns may nul-"lify that right by 'unfriendly legislation,' and you "are without remedy." Mr. Senator! whenever I realize that the slaveholders have a constitutional right to carry their human chattels into the Territories and hold them there, I will respect that right in its legitimate scope and spirit, and not attempt to whittle it away, as you do in your comments on the Dred Scott decision. The topic is a grave one; the time is earnest; the People intent on facts, and in no mood to be amused or cajoled by mere words. I think you misconceive alike topic, time and people, to your own serious damage.

Yours, HORACE GREELEY.

[For the Constitution.]

HON. REVERDY JOHNSON *VS.* THE DECISION OF THE SUPREME COURT IN THE DRED SCOTT CASE.

I have no disposition to write a book or to review the "Harper's Magazine article," or the "Observations" on the Hon. Reverdy Johnson on the Dred Scott decision. It would be a waste of material, if I possessed the ability, to vindicate the legal and constitutional opinions of Judge Black. He has discussed the question so thoroughly, "*ab ovo usque ad mala*," that it would be superfluous to attempt to defend him, and unnecessary to reply to his assailants. It is, therefore, with no controversial spirit that I have volunteered to ask a place in your columns, in order that the erroneous impressions of Mr. Johnson's article as to the true meaning of the Dred Scott decision may be removed.

I would not insinuate that Mr. Johnson has misquoted or misrepresented the opinion of the court in that case; but one thing is certain, either he does not understand what the court intended to publish as their views upon the questions, both legal and constitutional, involved in the case, or Chief Justice Taney is very unfortunate in his language, as expressed in the Head Notes to the opinion, as to what the court itself meant by the decision.

Mr. Johnson contends, 1st, that Congress cannot legislate in regard to slave property within a Territory of the United States, to whose people they have granted a territorial government clothed with legislative power. 2d. Congress cannot, in advance of such a grant, prohibit or establish slavery within the Territory, nor can they do either or protect by legislation such property if found there against the will of the local government. 3d. The territorial government can do all or either—that is, establish, or prohibit, or protect.

The only point decided by the Supreme Court in the case referred to, according to the understanding of the distinguished lawyer who has deemed it necessary to come to the defence of his senatorial friend from Illinois, is, that Congress has no power to prohibit slavery previous to its awarding a territorial government.

What did the court say? They decided, (vide page 395 Howard's Reports, vol. 19:)

1st. "The territory thus acquired is acquired by the people of the United States for their common and equal benefit, through their agent and trustee, the Federal Government. Congress can exercise no power over the rights of persons or property of a citizen in the Territory which is prohibited by the Constitution. The Government and the citizen, whenever the Territory is open to settlement, both enter it with their respective rights defined and limited by the Constitution."

2d. "Congress have no right to prohibit the citizens of any particular State or States from taking up their home there, while it permits citizens of other States to do so. Nor has it a right to give privileges to one class of citizens which it refuses to another. The Territory is acquired for their equal and common benefit, and if open to any it must be open to all upon equal and the same terms."

3d. "Every citizen has a right to take with him into the Territory any article of property which the Constitution of the United States recognises as property."

4th. "The Constitution of the United States recognises slaves as property, and pledges the Federal Government to protect it. And Congress cannot exercise any more authority over property of that description than it may

constitutionally exercise over property of any other kind."

5th. "The act of Congress, therefore, prohibiting a citizen of the United States taking with him his slaves when he removes to the Territory in question to reside, is an exercise of authority over private property which is not warranted by the Constitution, and the removal of the plaintiff by his owner to that Territory gave him no title to freedom."

6th. "While it remains a Territory Congress may legislate over it within the scope of its constitutional powers in relation to citizens of the United States, and may establish a territorial government, and the form of this local government must be regulated by the discretion of Congress; but with powers not exceeding those which Congress itself by the Constitution is authorized to exercise over citizens of the United States in respect to their rights of persons or rights of property."

Mr. Johnson takes exception to the expression of the President in a special message to Congress, that "it has been solemnly adjudged by the highest judicial tribunal known to our laws that slavery exists in Kansas by virtue of the Constitution of the United States," and pronounces his interpretation of the decision of the Supreme Court to be incorrect. The taste he displays in commenting upon the views of the Chief Magistrate of the Republic is exclusively his own, and, if he is contented, I have no desire to deprive him of the honor. The asperity in which he indulges can add nothing to his reputation, and the cause he advocates cannot be strengthened by that want of amenity which characterizes his production.

The President says that "it has been solemnly adjudged by the highest tribunal known to our laws that slavery exists in Kansas by virtue of the Constitution of the United States."

The court say "every citizen has a right to take with him into the Territory any article of property which the Constitution of the United States recognises as property, and the Constitution of the United States recognises slaves as property, and pledges the Federal Government to protect it."

Mr. Johnson says the President misunderstands the decision of the court. The public can best decide who is right, and if language is permitted to have its legitimate meaning I do not envy Mr. Johnson in the dilemma which impugns alike either his intelligence or his probity, and from one of which there is no escape. If the court has decided (*vide* 19th vol. Howard's Reports, page 395) that "the Constitution of the United States recognises slaves as property, and pledges the Federal Government to protect it," how, in the name of common sense and legal interpretation, does slavery exist in the Territories, unless by virtue of that instrument?

The statement of the two declarations alone is sufficient to vindicate the President from the aspersions of his traducer. But I have a higher object in bringing this subject to the notice of the people. The alarming condition which now surrounds public affairs, the threatening aspect which disturbs the public quiet, truth and justice, the security of our homes and our altars, and the perpetuity of our institutions and our government, authoritatively demand this exposure, regardless of the wound it may inflict upon a life-earned and distinguished reputation which I had hoped was above reproach and would prove impregnable from attack. C.

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