

Restriction on the State of Missouri

Thursday, February 15.

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Mr. Pinkney, of Maryland, rose and addressed the Senate nearly three hours against the restriction, and in reply to the remarks of Mr. King, of New York. His speech follows:*

Mr. President: As I am not a very frequent speaker in this assembly, and have shown a desire, I trust, rather to listen to the wisdom of others than to lay claim to superior knowledge by undertaking to advise, even when advice, by being seasonable in point of time, might have some chance of being profitable, you will, perhaps, bear with me if I venture to trouble you once more on that eternal subject which has lingered here, until all its natural interest is exhausted, and every topic connected with it is literally worn to tatters. I shall, I assure you, sir, speak with laudable brevity—not merely on account of the feeble state of my health, and from some reverence for the laws of good taste which forbid me to speak otherwise, but also from a sense of justice to those who honor me with their attention. My single purpose, as I suggested yesterday, is to subject to a friendly, yet close examination, some portions of a speech, imposing, certainly, on account of the distinguished quarter from whence it came—not very imposing (if I may so say, without departing from that respect which I sincerely feel and intend to manifest for eminent abilities and long experience) for any other reason.

I believe, Mr. President, that I am about as likely to retract an opinion which I have formed as any member of this body, who, being a lover of truth, inquires after it with diligence before he imagines that he has found it; but I suspect that we are all of us so constituted as that neither argument nor declamation, leveled against recorded and published decision, can easily discover a practicable avenue through which he may hope to reach either our heads or our hearts. I mention this lest it may excite surprise, when I take the liberty to add, that the speech of the honorable gentleman from New York, upon the great subject with which it was principally occupied, has left me as great a infidel as it found me. It is possible, indeed, that if I had had the good fortune to hear that speech at an earlier stage of this debate, when all was fresh and new, although I feel confident that the analysis which it contained of the constitution, illustrated as it was by historical anecdote rather than by reasoning, would have been just as unsatisfactory to me then as it is now, I might not have been altogether unmoved by those warnings of approaching evil which it seemed to intimate, especially when taken in connection with the observations of the same honorable gentleman on the preceding day, “that, delays in disposing of this subject in the manner he desires are dangerous, and that we stand on slippery ground.” I must be permitted, however, (speaking only for myself,) to say that the hour of dismay is passed. I have heard the tones of the larum bell on all sides, until they have become familiar to my ear, and have lost their

power to appall, if, indeed, they ever possessed it. Notwithstanding occasional appearances of rather an unfavorable description, I have long since persuaded myself that the Missouri question, might be laid to rest, with innocence and safety, by some conciliatory compromise at least, by which, as is our duty, we might reconcile the extremes of views and feelings, without any sacrifice of constitutional principle; and in any event, that the Union would easily and triumphantly emerge from those portentous clouds with which this controversy is supposed to have environed it.

I confess to you, nevertheless, that some of the principles announced by the honorable gentleman from New York, with an explicitness that reflected the highest credit on his candor, did, when they were first presented, startle me not a little. They were not perhaps

*Mr. Pinkney spoke twice on this subject—once to the restriction itself, before Mr. King took his seat, now in reply to Mr. King. The first speech of Mr. Pinkney was not reported, nor has that of Mr. King been to which he replied. entirely new. Perhaps I had seen them before in some shadowy and doubtful shape, *“If shape it might be called, that shape had none, Distinguishable in member, joint, or limb?”*

But in the honorable gentleman's speech they were shadowy and doubtful no longer. He exhibited them in forms so boldly and accurately—with contours so distinctly traced—with features so pronounced and striking that I was unconscious for a moment that they might be old acquaintances. I received them as a novi hospites within these walls, and gazed upon them with astonishment and alarm. I have recovered, however, thank God, from this paroxysm of terror, although not from that of astonishment. I have sought and found tranquillity and courage in my former consolatory faith. My reliance is that these principles will obtain no general currency; for, if they should, it requires no gloomy imagination to sadden the perspective of the future. My reliance is upon the unsophisticated good sense and noble spirit of the American people. I have what I may be allowed to call a proud and patriotic trust, that they will give countenance to no principles which, if followed out to their obvious consequences, will not only shake the goodly fabric of the Union to its foundations, but reduce it to a melancholy ruin. The people of this country, if I do not wholly mistake their character, are wise as well as virtuous. They know the value of that federal association which is to them the single pledge and guarantee of power and peace. Their warm and pious affections will cling to it as to their only hope of prosperity and happiness, in defiance of pernicious abstractions, by whomsoever inculcated, or howsoever seductive or alluring in their aspect.

Sir, it is not an occasion like this, although connected, as contrary to all reasonable expectation it has been, with fearful and disorganizing theories, which would make our estimates, whether fanciful or sound, of natural law, the measure of civil rights and political sovereignty in the social state, that can harm the Union. It must indeed be a mighty storm that can push from its moorings this sacred bark of the common safety. It is not every trifling breeze, however it may be made to sob and howl in imitation of the tempest, by the auxiliary breath of the ambitious, the timid, or the discontented, that can drive this gallant vessel, freighted with every thing that is dear to an American bosom, upon the rocks, or lay it a sheer hulk upon the ocean. I may, perhaps, mistake the flattering suggestions of hope, (the greatest of all flatterers, as we are told,) for the conclusion of sober reason. Yet it is pleasing error, if it be an error, and no man shall take it from me. I will continue to cherish the belief, in defiance of the public patronage given by the honorable gentleman from New York, with more than his ordinary zeal and solemnity, to

deadly speculations which, invoking the name of God to aid their faculties for mischief, strike at all establishments, that the union of these States is formed to bear up against far greater shocks than, through all vicissitudes, it is ever likely to encounter. I will continue to cherish the belief that, although like all other human institutions, it may for a season be disturbed, or suffer momentary eclipse by the transit across its disk of some malignant planet, it possesses a recuperative force, a redeeming energy in the hearts of the people, that will soon restore it to its wonted clam, and give it back its accustomed splendor. On such a subject I will discard all hysterical apprehensions, I will deal in no sinister auguries, I will indulge in no hypochondriacal forebodings. I will look forward to the future with gay and cheerful hope; and I will make the prospect smile, in fancy at least, until overwhelming reality shall render it no longer possible.

I have said thus much, sir, in order that I may be understood as meeting the constitutional question as a mere question of interpretation, and as disdaining to press into the service of my argument upon it prophetic fears of any sort, however they may be countenanced by an avowal, formidable by reason of the high reputation of the individual by whom it has been hazarded, of sentiments the most destructive, which, if not borrowed from, are identical with, the worst visions of the political philosophy of France when all the elements of discord and misrule were let loose upon that devoted nation. I mean "the infinite perfectibility of man and his institutions," and the resolution of everything into a state of nature. I have another motive, which, at the risk of being misconstrued, I will declare without reserve. With my convictions, and with my feelings, I never will consent to hold confederated America as bound together by a silken cord, which any instrument of mischief may sever, to the view of monarchical foreigners, who look with a jealous eye upon that glorious experiment which is now in progress amongst us in favor of republican freedom. Let them make such prophecies as they will, and nourish such feelings as they may: I will not contribute to the fulfillment of the former, nor minister to the gratification of the latter.

Sir, it was but the other day that we were forbidden, (properly forbidden I am sure, for the prohibition came from you,) to assume that there existed any intention to impose a prospective restraint on the domestic legislation of Missouri—a restraint to act upon it contemporaneously with its origin as a State, and to continue adhesive to it through all the stages of its political existence. We are now, however, permitted to know that it is determined by a sort of political surgery to amputate one of the limbs of its local sovereignty, and thus mangled and disparaged, and thus only, to receive it into the bosom of the Constitution. It is now avowed that, while Maine is to be ushered into the Union with every possible demonstration of studious reverence on our part, and on hers, with colors flying, and all the other graceful accompaniments of honorable triumph, this ill-conditioned upstart of the West, this obscure foundling of a wilderness that was but yesterday the hunting-ground of the savage, is to find her way into the American family as she can, with an humiliating badge of remediless inferiority patched upon her garments, with the mark of recent, qualified manumission upon her, or rather with a brand upon her forehead to tell the story of her territorial vassalage, and to perpetuate the memory of her evil propensities. It is now avowed that, while the robust district of Maine is to be seated by the side of her truly respectable parent, co-ordinate in authority and honor, and is to be dandled into that power and dignity of which she does not stand in need, but which undoubtedly she deserves, the more infantine and feeble Missouri is to be repelled with harshness, and forbidden to come at all, unless with the iron collar of servitude about her neck, instead of the civic crown of republican freedom upon her brows, and is to

be doomed forever to leading-strings, unless she will exchange those leading-strings for shackles.

I am told that you have the power to establish this odious and revolting distinction, and I am referred for the proofs of that power to various parts of the Constitution, but principally to that part of it which authorizes the admission of new States into the Union. I am myself of opinion that it is in that part only that the advocates for this restriction can, with any hope of success, apply for a license to impose it; and that the efforts which have been made to find it in other portions of that instrument, are too desperate to require to be encountered. I shall, however, examine those other portions before I have done, lest it should be supposed by those who have relied upon them, that what I omit to answer I believe to be unanswerable.

The clause of the Constitution which relates to the admission of new States is in these words: "The Congress may admit new States into this Union," etc., and the advocates for restriction maintain that the use of the word "may" imports discretion to admit or to reject; and that in this discretion is wrapped up another—that of prescribing the terms and conditions of admission in case you are willing to admit: "Cujus est dare ejus est disponere." I will not for the present inquire whether this involved discretion to dictate the terms of admission belongs to you or not. It is fit that I should first look to the nature and extent of it.

I think I may assume that if such a power be anything but nominal, it is much more than adequate to the present object—that it is a power of vast expansion, to which human sagacity can assign no reasonable limits—that it is a capacious reservoir of authority, from which you may take, in all time to come, as occasion may serve, the means of oppression as well as of benefaction. I know that it professes at this moment to be the chosen instrument of protecting mercy, and would win upon us by its benignant smiles; but I know, too, it can frown and play the tyrant, if it be so disposed. Notwithstanding the softness which it now assumes, and the care with which it conceals its giant proportions beneath the deceitful drapery of sentiment, when it next appears before you it may show itself with a sterner countenance and in more awful dimensions. It is, to speak the truth, sir, a power of colossal size—if indeed it be not an abuse of language to call it by the gentle name of a power. Sir, it is a wilderness of power, of which fancy in her happiest mood is unable to perceive the far distant and shadowy boundary. Armed with such a power, with religion in one hand and philanthropy in the other, and followed with a goodly train of public and private virtues, you may achieve more conquests over sovereignties not your own than falls to the common lot of even uncommon ambition. By the aid of such a power, skillfully employed, you may "bridge your way" over the Hellespont that separates State legislation from that of Congress; and you may do so for pretty much the same purpose with which Xerxes once bridged his way across the Hellespont that separates Asia from Europe. He did so, in the language of Milton, "the liberties of Greece to yoke." You may do so for the analogous purpose of subjugating and reducing the sovereignties of States, as your taste or convenience may suggest, and fashioning them to your imperial will. There are those in this House who appear to think, and I doubt not sincerely, that the particular restraint now under consideration is wise, and benevolent, and good; wise as respects the Union—good as respects Missouri—benevolent as respects the unhappy victims whom with a novel kindness it would incarcerate in the south, and bless by decay and extirpation. Let all such beware, lest in their desire for the effect which they believe the restriction will produce, they are too easily satisfied that they have the right to

impose it. The moral beauty of the present purpose, or even its political recommendations (whatever they may be), can do nothing for a power like this, which claims to prescribe conditions ad libitum, and to be competent to this purpose, because it is competent to all. This restriction, if it be not smothered in its birth, will be but a small part of the progeny of the prolific power. It teems with a mighty brood, of which this may be entitled to the distinction of comeliness as well as of primogeniture. The rest may want the boasted loveliness of their predecessor, and be even uglier than “Lapland witches.”

Perhaps, sir, you will permit me to remind you that it is almost always in company with those considerations that interest the heart in some way or other, that encroachment steals into the world. A bad purpose throws no veil over licenses of power. It leaves them to be seen as they are. It affords them no protection from the inquiring eye of jealousy. The danger is, when a tremendous discretion like the present is attempted to be assumed, as on this occasion, in the names of pity, of religion, of national honor, and national prosperity; when encroachment tricks itself out in the robes of piety or humanity, or addresses itself to pride of country, with all its kindred passions and motives. It is then that the guardians of the constitution are apt to slumber on their watch, or, if awake, to mistaken for lawful rule some pernicious arrogation of power.

I would not discourage authorized legislation upon those kindly, generous, and noble feelings which Providence has given to us for the best of purposes; but when power to act is under discussion, I will not look to the end in view, lest I should become indifferent to the lawfulness of the means. Let us discard from this high constitutional question all those extrinsic considerations which have been forced into its discussion. Let us endeavor to approach it with a philosophic impartiality of temper—with a sincere desire to ascertain the boundaries of our authority, and a determination to keep our wishes in subjection to our allegiance to the Constitution.

Slavery, we are told in many a pamphlet, memorial, and speech, with which the press has lately groaned, is a foul blot upon our otherwise immaculate reputation. Let this be conceded—yet you are no nearer than before to the conclusion that you possess power which may deal with other subjects as effectually as with this. Slavery, we are further told, with some pomp of metaphor, is a canker at the root of all that is excellent in this republican empire, a pestilent disease that is snatching the youthful bloom from its cheek, prostrating its honor and withering its strength. Be it so—yet if you have power to medicine to it in the way proposed, and in virtue of the diploma which you claim, you have also power in the distribution of your political alexipharmics to present the deadliest drugs to every territory that would become a State, and bid it drink or remain a colony forever. Slavery, we are also told, is now “rolling onward with a rapid tide towards the boundless regions of the West,” threatening to doom them to sterility and sorrow, unless some potent voice can say to it, thus far shalt thou go, and no farther. Slavery engenders pride and indolence in him who commands, and inflicts intellectual and moral degradation on him who serves. Slavery, in fine, is unchristian and abominable. Sir, I shall not stop to deny that slavery is all this and more; but I shall not think myself the less authorized to deny that it is for you to stay the course of this dark torrent, by opposing to it a mound raised up by the labors of this portentous discretion on the domain of others—a mound which you cannot erect but through the instrumentality of a trespass of no ordinary kind—not the comparatively innocent trespass that beats down a few blades of grass which the first kind sun or the next refreshing shower may cause to spring again—but that which levels

with the ground the lordliest trees of the forest, and claims immortality for the destruction which it inflicts.

I shall not, I am sure, be told that I exaggerate this power. It has been admitted here and elsewhere that I do not. But I want no such concession. It is manifest that as a discretionary power it is everything or nothing—that its head is in the clouds, or that it is a mere figment of enthusiastic speculation—that it has no existence, or that it is an alarming vortex ready to swallow up all such portions of the sovereignty of an infant State as you may think fit to cast into it as preparatory to the introduction into the union of the miserable residue. No man can contradict me when I say, that if you have this power, you may squeeze down a new-born sovereign State to the size of a pigmy, and then taking it between finger and thumb, stick it into some niche of the Union, and still continue by way of mockery to call it a State in the sense of the Constitution. You may waste it to a shadow, and then introduce it into the society of flesh and blood an object of scorn and derision. You may sweat and reduce it to a thing of skin and bone, and then place the ominous skeleton beside the ruddy and healthful members of the Union, that it may have leisure to mourn the lamentable difference between itself and its companions, to brood over its disastrous promotion, and to seek in justifiable discontent an opportunity for separation, and insurrection, and rebellion. What may you not do by dexterity and perseverance with this terrific power? You may give to a new State, in the form of terms which it cannot refuse, (as I shall show you hereafter,) a statute book of a thousand volumes—providing not for ordinary cases only, but even for possibilities; you may lay the yoke, no matter whether light or heavy, upon the necks of the latest posterity; you may send this searching power into every hamlet for centuries to come, by laws enacted in the spirit of prophecy, and regulating all those dear relations of domestic concern which belong to local legislation, and which even local legislation touches with a delicate and sparing hand. This is the first inroad. But will it be the last? This provision is but a pioneer for others of a more desolating aspect. It is that fatal bridge of which Milton speaks, and when once firmly built, what shall hinder you to pass it when you please for the purpose of plundering power after power at the expense of new States, as you will still continue to call them, and raising up prospective codes irrevocable and immortal, which shall leave to those States the empty shadows of domestic sovereignty, and convert them into petty pageants, in themselves contemptible, but rendered infinitely more so by the contrast of their humble faculties with the proud and admitted pretensions of those who having doomed them to the inferiority of vassals, have condescended to take them into their society and under their protection?

I shall be told, perhaps, that you can have no temptation to do all or any part of this, and, moreover, that you can do nothing of yourselves, or, in other words, without the concurrence of the new State. The last of these suggestions I shall examine by and by. To the first* I answer that it is not incumbent upon me to prove that this discretion will be abused. It is enough for me to prove the vastness of the power as an inducement to make us pause upon it, and to inquire with attention whether there is any apartment in the constitution large enough to give it entertainment. It is more than enough for me to show that vast as is this power, it is with reference to mere Territories an irresponsible power. Power is irresponsible when it acts upon those who are defenseless against it; who cannot check it, or contribute to check it in its exercise; who can resist it only by force. The Territory of Missouri has no “check upon this power. It has no share in the government of the Union. In this body it has no representative. In the other House it has, by courtesy, an agent, who may remonstrate, but cannot vote. That such an irresponsible power is not likely to be abused, who will undertake to assert? If it is not,” experience is a cheat, and fact a liar.” The

power which England claimed over the colonies was such a power, and it was abused; and hence the Revolution. Such a power is always perilous to those who wield it, as well as to those on whom it is exerted. Oppression is but another name for irresponsible power, if history is to be trusted.

The free spirit of our constitution and of our people is no assurance against the propension of unbridled power to abuse, when it acts upon colonial dependents rather than upon ourselves. Free States, as well as despots, have oppressed those whom they were bound to foster ; and it is the nature of man that it should be so. The love of power and the desire to display it when it can be done with impunity, is inherent in the human heart. Turn it out at the door, and it will in again at the window. Power is displayed in its fullest measure, and with a captivating dignity, by restraints and conditions. The *pruritas leges ferendi* is a universal disease, and conditions are laws as far as they go. The vanity of human wisdom, and the presumption of human reason, are proverbial. This vanity and this presumption are often neither reasonable nor wise. Humanity, too, sometimes plays fantastic tricks with power. Time, more over, is fruitful in temptations to convert discretionary power to all sorts of purposes.

Time, that withers the strength of man, and “strews around him, like autumnal leaves, the ruins of his proudest monuments,” produces great vicissitudes in modes of thinking and feeling. It brings along with it, in its progress, new circumstances, new combinations and modifications of the old, generating new views, motives, and caprices, new fanaticisms of endless variety — in short, new every thing. We ourselves are always changing — and what today we have but a small desire to attempt, to-morrow becomes the object of our passionate aspirations.

There is such a thing as enthusiasm, moral, religious, or political, or a compound of all” three; and it is wonderful what it will attempt, and from what imperceptible beginnings it sometimes rises into a mighty agent. Rising from some obscure or unknown source, it first shows itself a petty rivulet, which scarcely murmurs over the pebbles that obstruct its way; then it swells into a fierce torrent, bearing all before it; and again, like some mountain stream which occasional rains have precipitated upon the valley, it sinks once more into a rivulet, and finally leaves its channel dry. Such a thing has happened. I do not say that it is now happening. It would not become me to say so. But, if it should occur, woe to the unlucky Territory that should be struggling to make its way into the Union at the moment when the opposing inundation was at its height, and at the same instant this wide Mediterranean of discretionary powers, which it seems is ours, should open up all its sluices, and with a consentaneous rush, mingle with the turbid waters of the others!

“New States may be admitted by the Congress into this Union.” It is objected that the word “may” imports power, not obligation—a right to decide—a discretion to grant or refuse.

To this it might be answered that power is duty on many occasions. But let it be conceded that it is discretionary. What consequence follows? A power to refuse, in a case like this, does not necessarily involve a power to exact terms. You must look to the result which is the declared object of the power. Whether you will arrive at it, or not, may depend on your will; but you cannot compromise with the result intended and professed.

What then is the professed result? To admit a State into this Union.

What is that Union? A confederation of States equal in sovereignty—capable of everything which the Constitution does not forbid, or authorize Congress to forbid. It is an equal union, between parties equally sovereign. They were sovereign independently of the Union. The object of the Union was common protection for the exercise of already existing sovereignty. The parties gave up a portion of that sovereignty to insure the remainder. As far as they gave it up by the common compact they have ceased to be sovereign. The Union provides the means of defending the residue; and it is into that Union that a new State is to come. By acceding to it, the new State is placed on the same footing with the original States. It accedes for the same purpose, i.e., protection for their unsundered sovereignty. If it comes in shorn of its beams—crippled and disparaged beyond the original States, it is not into the original Union that it comes. For it is a different sort of Union. The first was Union inter pares. This is a Union between “disparates”—between giants and a dwarf—between power and feebleness—between full proportioned sovereignties and a miserable image of power—athing which that very Union has shrunk and shrivelled from its just size, instead of preserving it in its true dimensions.

It is into this Union, i. e., the Union of the Federal Constitution, that you are to admit, or refuse to admit. You can admit into no other. You cannot make the Union, as to the new State, what it is not as to the old; for then it is not this Union that you open for the entrance of a new party. If you make it enter into a new and additional compact, is it any longer the same Union?

We are told that admitting a State into the Union is a compact. Yes, but what sort of a compact? A compact that it shall be a member of the Union, as the Constitution has made it. You cannot new fashion it. You may make a compact to admit, but when admitted the original compact prevails. The Union is a compact, with a provision of political power and agents for the accomplishment of its objects. Vary that compact as to a new State—give new energy to that political power so as to make it act with more force upon a new State than upon the old—make the will of those agents more effectually the arbiter of the fate of a new State than of the old, and it may be confidently said that the new State has not entered into this Union, but into another Union. How far the Union has been varied is another question. But that it has been varied is clear.

If I am told that by the bill relative to Missouri, you do not legislate upon a new State, I answer that you do; and I answer further that it is immaterial whether you do or not. But it is upon Missouri, as a State, that your terms and conditions are to act. Until Missouri is a State, the terms and conditions are nothing. You legislate in the shape of terms and conditions, prospectively—and you so legislate upon it that when it comes into the Union it is to be bound by a contract degrading and diminishing its sovereignty—and is to be stripped of rights which the original parties to the Union did not consent to abandon, and which that Union (so far as depends upon it) takes under its protection and guarantee.

Is the right to hold slaves a right which Massachusetts enjoys? If it is, Massachusetts is under this Union in a different character from Missouri. The compact of Union for it, is different from the same compact of Union for Missouri. The power of Congress is different—everything which depends upon the Union is, in that respect, different.

But it is immaterial whether you legislate for Missouri as a State or not. The effect of your legislation is to bring it into the Union with a portion of its sovereignty taken away.

But it is a State which you are to admit. What is a State in the sense of the Constitution? It is not a State in the general—but a State as you find it in the Constitution. A State, generally, is a body politic or independent political society of men. But the State which you are to admit must be more or less than this political entity. What must it be? Ask the constitution. It shows what it means by a State by reference to the parties to it. It must be such a State as Massachusetts, Virginia, and the other members of the American confederacy—a State with full sovereignty except as the constitution restricts it.

It is said that the word *may* necessarily implies the right of prescribing the terms of admission. Those how maintain this are aware that there are no express words, (such as, upon such terms and conditions as Congress *shall* think fit,) words which it was natural to expect to find in the constitution, if the effect contended for were meant. They put it, therefore, on the word *may*, and on that alone.

Give to that word all the force you please, what does it import? That Congress is not bound to admit a new State into this Union. Be it so for argument's sake. Does it follow that when you consent to admit into this Union a new State you can make it less in sovereign power than the original parties to that Union; that you can make the Union as to it what it is not as to them; that you can fashion it to your liking by compelling it to purchase admission into a Union by sacrificing a portion of that power which it is the sole purpose of the Union to maintain in all the plenitude which the Union itself does not impair? Does it follow that you can force upon it an additional compact not found in the compact of Union; that you can make it come into the Union less a State, in regard to sovereign power, than its fellows in that Union; that you can cripple its legislative competency (beyond the constitution which is the pact of Union, to which you make it a party as if it had been originally a party to it) by what you choose to call a condition, but which, whatever it may be called, brings the new government into the Union under new obligations to it, and with disparaged power to be protected by it?

In a word, the whole amount of the argument on the other side is, that you may refuse to admit a new State, and that therefore if you admit, you may prescribe the terms.

The answer to that argument is—that even if you can refuse, you can prescribe no terms which are inconsistent with the act you are to do. You can prescribe no conditions which, if carried into effect, would make the new State less a sovereign State than, under the Union as it stands, it would be. You can prescribe no terms which will make the compact of Union between it and the original States essentially different from that compact among the original States. You may admit, or refuse to admit: but if you admit, you must admit a State in the sense of the Constitution—a State with all such sovereignty as belongs to the original parties: and it must be into this Union that you are to admit it, not into a Union of your own dictating, formed out of the existing Union by qualifications and new compacts, altering its character and effect, and making it fall short of its pro-protecting energy in reference to the new State, whilst it acquires an energy of another sort—the energy of restraint and destruction.

I have thus endeavored to show that even if you have a discretion to refuse to admit, you have no

discretion, if you are willing to admit, to insist upon any terms that impair the sovereignty of the admitted State as it would otherwise stand in the Union by the constitution which receives it into its bosom. To admit or not is for you to decide. Admission once conceded, it follows as a corollary that you must take the new State as an equal companion with its fellows; that you cannot recast or new-model the Union pro hoc vice; but that you must receive it into the actual Union, and recognize it as a parcener in the common inheritance, without any other shackles than the rest have, by the constitution, submitted to bear, without any other extinction of power than is the work of the constitution acting indifferently upon all.

I may be told, perhaps, that the restriction, in this case, is the act of Missouri itself; that your law is nothing without its consent, and derives its efficacy from that alone. I shall have a more suitable occasion to speak on this topic hereafter, when I come to consider the treaty which ceded Louisiana to the United States. But I will say a few words upon it now, of a more general application than it will in that branch of the argument be necessary to see.

A Territory cannot surrender to Congress by anticipation the whole or a part of the sovereign power, which, by the constitution of the Union, will belong to it when it becomes a State and a member of the Union. Its consent is therefore nothing. It is in no situation to make this surrender. It is under the government of Congress; if it can barter away a part of its sovereignty, by anticipation, it can do so as to the whole; for where will you stop? If it does not cease to be a State, in the sense of the constitution, with only a certain portion of sovereign power, what other smaller portion will have that effect? If you depart from the standard of the constitution — that is, the quantity of domestic sovereignty left in the first contracting States, and secured by the original compact of Union, where will you get another standard? Consent is no standard; for consent may be gained to a surrender of all.

No State, or Territory, in order to become a State, can alienate or surrender any portion of its sovereignty to the Union, or to a sister State, or to a foreign nation. It is under an incapacity to disqualify itself for all the purposes of government left to it in the constitution, by stripping itself of attributes which arise from the natural equality of States, and which the constitution recognizes, not only because it does not deny them, but presumes them to remain as they exist by the law of nature and nations, inequality in the sovereignty of States is unnatural, and repugnant to all the principles of that law. Hence we find it laid down by the text-writers on public law, that “Nature has established a perfect equality of rights between independent nations:” and that, “whatever the quality of a free sovereign nation gives to one, it gives to another.” The Constitution of the United States proceeds upon the truth of this doctrine. It takes the States as it finds them, free and sovereign alike by nature. It receives from them portions of their power for the general good, and provides for the exercise of it by organized political bodies. It diminishes the individual sovereignty of each, and transfers what it subtracts to the Government which it creates; it takes from all alike, and leaves them relatively to each other equal in sovereign power.

The honorable gentleman from New York has put the constitutional argument altogether upon the clause relative to admission of new States into the Union. He does not pretend that you can find the power to restrain, in any extent, elsewhere. It follows that it is not a particular power to impose this restriction, but a power to impose restrictions ad libitum. It is competent to this, because it is competent to every thing.

But he denies that there can be any power in man to hold in slavery his fellow-creature, and argues, therefore, that the prohibition is no restraint at all, since it does not interfere with the sovereign powers of Missouri.

One of the most signal errors with which the argument on the other side has abounded, is this of considering the proposed restriction as if levelled at the introduction or establishment of slavery. And hence the vehement declamation, which, among other things, has informed us that slavery originated in fraud or violence.

The truth is, that the restriction has no relation, real or pretended, to the right of making slaves of those who are free, or of introducing slavery where it does not already exist. It applies to those who are admitted to be already slaves, and who (with their posterity) would continue to be slaves if they should remain where they are at present; and to a place where slavery already exists by the local law. Their civil condition will not be altered by their removal from Virginia, or Carolina, to Missouri. They will not be more slaves than they now are. Their abode, indeed, will be different, but their bondage the same. Their numbers may possibly be augmented by the diffusion, and I think they will. But this can only happen because their hardships will be mitigated, and their comforts increased. The checks to population, which exist in the older States, will be diminished. The restriction, therefore does not prevent the establishment of slavery, either with reference to persons or place; but simply inhibits the removal from place to place (the law in each being the same) of a slave, or make his emancipation the consequence of that removal. It acts professedly merely on slavery as it exists, and thus acting restrains its present lawful effects. That slavery, like many other human institutions, originated in fraud or violence, may be conceded: but, however it originated, it is established among us, and no man seeks a further establishment of it by new importations of freemen to be converted into slaves. On the contrary, all are anxious to mitigate its evils, by all the means within the reach of the appropriate authority, the domestic legislatures of the different States.

It can be nothing to the purpose of this argument, therefore, as the gentlemen themselves have shaped it, to inquire what was the origin of slavery. What is it now, and who are they that endeavor to innovate upon what it now is, (the advocates of this restriction who desire change by unconstitutional means, or its opponents who desire to leave the whole matter to local regulation?) are the only questions worthy of attention.

Sir, if we too closely look to the rise and progress of long-sanctioned establishments and unquestioned rights, we may discover other subjects than that of slavery, with which fraud and violence may claim a fearful connection, and over which it may be our interest to throw the mantle of oblivion. What was the settlement of our ancestors in this country but an invasion of the rights of the barbarians who inhabited it? That settlement, with slight exceptions, was effected by the slaughter of those who did no more than defend their native land against the intruders of Europe, or by unequal compacts and purchases, in which feebleness and ignorance had to deal with power and cunning. The savages who once built their huts where this proud Capitol, rising from its recent ashes, exemplifies the sovereignty of the American people, were swept away by the injustice of our fathers, and their domain usurped by force, or obtained by artifices yet more criminal. Our continent was full of those aboriginal inhabitants. Where are they or

their descendants? Either “with years beyond the flood,” or driven back by the swelling tide of our population from the borders of the Atlantic to the deserts of the West. You follow still the miserable remnants, and make contracts with them that seal their ruin. You purchase their lands, of which they know not the value, in order that you may sell them to advantage, increase your treasure, and enlarge your empire. Yet further; you pursue as they retire; and they must continue to retire until the Pacific shall stay their retreat, and compel them to pass away as a dream. Will you recur to those scenes of various iniquity for any other purpose than to regret and lament them? Will you pry into them with a view to shake and impair your rights of property and dominion?

But the broad denial of the sovereign right of Missouri, if it shall become a sovereign State, to recognize slavery by its laws, is rested upon a variety of grounds, all of which I will examine.

It is an extraordinary fact, that they who urge this denial with such ardent zeal, stop short of it in their conduct. There are now slaves in Missouri whom they do not insist upon delivering from their chains. Yet, if it is incompetent to sovereign power to continue slavery in Missouri, in respect of slaves who may yet be carried thither, show me the power that can continue it in respect of slaves who are there already. Missouri is out of the old limits of the Union, and beyond those limits, it is said, we can give no countenance to slavery, if we can countenance or tolerate it anywhere. It is plain that there can be no slaves beyond the Mississippi at this moment, but in virtue of some power to make or keep them so. What sort of power was it that has made or kept them so! Sovereign power it could not be, according to the honorable gentlemen from Pennsylvania, and New Hampshire, (Messrs. Roberts, Loweie, and Morrill;) and if sovereign power is unequal to such a purpose, less than sovereign power is yet more unequal to it. The laws of Spain and France could do nothing; the laws of the territorial government of Missouri could do nothing towards such a result, if it be a result which no laws, in other words, no sovereignty could accomplish. The treaty of 1803 could do no more in this view, than the laws of France, or Spain, or the territorial government of Missouri. A treaty is an act of sovereign power, taking the shape of a compact between the parties to it; and that which sovereign power cannot reach at all, it cannot reach by a treaty. Those who are now held in bondage, therefore, in Missouri, and their issue, are entitled to be free, if there be any truth in the doctrine of the honorable gentlemen; and if the proposed restriction leaves all such in slavery, it thus discredits the very foundation on which it reposes. To be inconsistent is the fate of false principles; and this inconsistency is the more to be remarked, since it cannot be referred to mere considerations of policy, without admitting that such considerations may be preferred without a crime, to what is deemed a paramount and indispensable duty.

It is here, too, that I must be permitted to observe, that the honorable gentlemen have taken great pains to show that this restriction is a mere work of supererogation by the principal argument on which they rest the proof of its propriety. Missouri, it is said, can have no power to do what the restriction would prevent. It would be void, therefore, without the restriction. Why, then, I ask, is the restriction insisted upon? Restraint implies that there is something to be restrained; but the gentlemen justify the restraint, by showing that there is nothing upon which it can operate! They demonstrate the wisdom and necessity of restraint, by demonstrating that, with or without restraint, the subject is in the same predicament. This is to combat with a man of straw, and to put fetters upon a shadow.

The gentlemen must therefore abandon either their doctrine or their restriction—their argument or their object—for they are directly in conflict, and reciprocally destroy each other. It is evident that they will not abandon their object, and, of course, I must believe that they hold their argument in as little real estimation as I myself do. The gentlemen can scarcely be sincere believers in their own principle. They have apprehensions which they endeavor to conceal, that Missouri, as a State, will have the power to continue slavery within its limits; and, if they will not be offended, I will venture to compare them, in this particular, with the duellist in Sheridan's comedy of the Rivals, who, affecting to have no fear whatever of his adversary, is, nevertheless, careful to admonish Sir Lucius to hold him fast.

Let us take it for granted, however, that they are in earnest in their doctrine, and that it is very necessary to impose what they prove to be an unnecessary restraint: how do they support that doctrine?

The honorable gentleman on the other side (Mr. King) has told us, as a proof of his great position, that man cannot enslave his fellow man, in which is implied that all laws upholding slavery are absolute nullities; that the nations of antiquity, as well as of modern times, have concurred in laying down that position as in controvertible.

He refers us, in the first place, to the Roman law, in which he finds it laid down as a maxim: *Jure naturali omnes homines ab initio liberi nascebantur*. From the manner in which this maxim was pressed upon us, it would not readily have been conjectured that the honorable gentleman who used it had borrowed it from a slaveholding Empire, and still less from a book of the Institutes of Justinian, which treats of slavery, and justifies and regulates it. Had he given us the context, we should have had the modifications of which the abstract doctrine was, in the judgment of the Roman law, susceptible. We should have had an explanation of the competency of that law, to convert, whether justly or unjustly, freedom into servitude, and to maintain the right of a master to the service and obedience of his slave.

The honorable gentleman might also have gone to Greece for a similar maxim and a similar commentary, speculative and practical.

He next refers us to Magna Charta. I am somewhat familiar with Magna Charta, and I am confident that it contains no such maxim as the honorable gentleman thinks he has discovered in it. The great charter was extorted from John, and his feeble son and successor, by haughty slaveholding barons, who thought only of themselves and the commons of England, (then inconsiderable,) whom they wished to enlist in their efforts against the Crown. There is not in it a single word which condemns civil slavery. Freemen only are the objects of its protecting care. "*Nullus liber homo*" is its phraseology. The serfs who were chained to the soil, the villeins regardant and in gross, were left as it found them. All England was then full of slaves, whose posterity would by law remain slaves as with us, except only that the issue followed the condition of the father instead of the mother. The rule was "*Partus sequitur patrem*" — a rule more favorable undoubtedly, from the very precariousness of its application, to the gradual extinction of slavery, than ours, which has been drawn from the Roman law, and is of sure and unavoidable effect.

Still less has the Petition of Right, presented to Charles I., by the Long Parliament, to do with the subject of civil slavery. It looked merely, as Magna Charta had done before it, to the freemen of England; and

sought only to protect them against royal prerogative and the encroaching spirit of the Stuarts.

As to the Bill of Rights, enacted by the Convention Parliament of 1688, it is almost a duplicate of the Petition of Right, and arose out of the recollection of that political tyranny from which the nation had just escaped, and the recurrence of which it was intended to prevent. It contains no abstract principles. It deals only with practical checks upon the power of the monarch, and in safeguards for institutions essential to the preservation of the public liberty. That it was not designed to anathematize civil slavery may be taken for granted, since at that epoch and long afterwards, the English Government inundated its foreign plantations with slaves, and supplied other nations with them as merchandise, under the sanction of solemn treaties negotiated for that purpose. And here I cannot forbear to remark that we owe it to that same Government, when it stood towards us in the relation of parent to child, that involuntary servitude exists in our land, and that we are now deliberating whether the prerogative of correcting its evils belongs to the National or the State Governments. In the early periods of our colonial history every thing was done by the mother country to encourage the importation of slaves into North America, and the measures which were adopted by the Colonial Assemblies to prohibit it were uniformly negatived by the Crown. It is not therefore our fault, nor the fault of our ancestors, that this calamity has been entailed upon us ; and, notwithstanding the ostentation with which the loitering abolition of the slave trade by the British Parliament has been vaunted, the principal consideration which at last reconciled it to that measure was, that, by suitable care, the slave population in their West India islands, already fully stocked, might be kept up and even increased without the aid of importation. In a word, it was cold calculations of interest, and not the suggestions of humanity, or a respect for the philanthropic principles of Mr. Wilberforce, which produced their tardy abandonment of that abominable traffic.

Of the declaration of our independence, which has also been quoted in support of the perilous doctrines now urged upon us, I need not now speak at large. I have shown on a former occasion how idle it is to rely upon that instrument for such a purpose, and I will not fatigue you by mere repetition. The self-evident truths announced in the Declaration of Independence are not truths at all, if taken literally; and the practical conclusions contained in the same passage of that declaration prove that they were never designed to be so received.

The articles of confederation contain nothing on the subject; whilst the actual Constitution recognizes the legal existence of slavery by various provisions. The power of prohibiting the slave trade is involved in that of regulating commerce, but this is coupled with an express inhibition to the exercise of it for twenty years. How then can that Constitution which expressly permits the importation of slaves authorize the National Government to set on foot a crusade against slavery?

The clause respecting fugitive slaves is affirmative and active in its effects. It is a direct sanction and positive protection of the right of the master to the services of his slave as derived under the local laws of the States. The phraseology in which it is wrapped up still leaves the intention clear, and the words, "persons held to service or labor in one State under the laws thereof," have always been interpreted to extend to the case of slaves, in the various acts of Congress which have been passed to give efficacy to the provision, and in the judicial application of those laws. So also in the clause prescribing the ratio of representation—the phrase, "three-fifths of all other persons," is equivalent to slaves, or it means

nothing. And yet we are told that those who are acting under a Constitution which sanctions the existence of slavery in those States which choose to tolerate it, are at liberty to hold that no law can sanction its existence!

It is idle to make the rightfulness of an act the measure of sovereign power. The distinction between sovereign power and the moral right to exercise it has always been recognized. All political power may be abused, but is it to stop where abuse may begin? The power of declaring war is a power of vast capacity for mischief, and capable of inflicting the most wide-spread desolation. But it is given to Congress without stint and without measure. Is a citizen, or are the courts of justice to inquire whether that, or any other law, is just, before they obey or execute it? And are there any degrees of injustice which will withdraw from sovereign power the capacity of making a given law?

But sovereignty is said to be deputed power. Deputed — by whom? By the people, because the power is theirs. And if it be theirs, does not the restriction take it away? Examine the Constitution of the Union, and it will be seen that the people of the States are regarded as well as the States themselves. The constitution was made by the people, and ratified by the people.

Is it fit, then, to hold that all the sovereignty of a State is in the government of the State? So much is there as the people grant: and the people can take it away, or give more, or new model what they have already granted. It is this right which the proposed restriction takes from Missouri. You give them an immortal constitution, depending on your will, not on theirs. The people and their posterity are to be bound forever by this restriction; and upon the same principle, any other restriction may be imposed. Where, then, is their power to change the constitution, and to devolve new sovereignty upon the State government? You limit their sovereign capacity to do it; and when you talk of a State, you mean the people as well as the Government. The people are the source of all power—you dry up that source. They are the reservoir—you take out of it what suits you.

It is said that this Government is a Government of deputed powers. So is every government—and what power is not deputed remains. But the people of the United States can give it more if they please, as the people of each State can do in respect to its own government. And here it is well to remember that this is a Government of enumerated, as well as deputed powers; and to examine the clause as to the admission of new States, with that principle in view. Now assume that it is a part of the sovereign power of the people of Missouri to continue slavery, and to devolve that power upon its Government, and then to take it away, and then to give it again. The Government is their creature—the means of exercising their sovereignty, and they can vary those means at their pleasure. Independently of the Union, their power would be unlimited. By coming into the Union, they part with some of it, and are thus less sovereign.

Let us, then, see whether they part with this power.

If they have parted with this portion of sovereign power, it must be under that clause of the national constitution which gives to Congress “power to admit new States into this Union.” And it is said that this necessarily implies the authority of prescribing the conditions upon which such new States shall be ad

mitted. This has been put into the form of a syllogism, which is thus stated:

Major. Every universal proposition includes all the means, manner, and terms, of the act to which it relates.

Minor. But this is a universal proposition. Conclusion. Therefore, the means, manner, and terms, are involved in it. But this syllogism is fallacious, and any thing else may be proved by it, by assuming one of its members which involves the conclusion. The minor is a mere postulate.

Take it in this way:

Major. None but a universal proposition includes in itself the terms and conditions of the act to be done.

Minor. But this is not such a universal proposition.

The logo for Monticello, featuring the name "Monticello" in a stylized, cursive script above the word "MONTICELLO" in a bold, serif, all-caps font.