Exhibit 78

in the case of:

People of the Republic of Texas
and the
Sovereign Nation of the Republic of Texas

v.

UNITED NATIONS
(and all it's Political Subdivisions)
and
UNITED STATES
(and all it's Political Subdivisions)

Under Pains and Penalties of perjury and the laws of the Almighty, and being sworn under a vow and oath, I attest that the attached pages are true and correct representations of the:

Appendix to the Congressional Globe, House of Representatives - January-February 1845, from the University of Texas at Arlington Library Archives Division, 6th floor. One partial original page included for proof, document is retyped for clarity.

This attestation is made on August 26, 1998.

Attest: Ed. Brannum

Witness to source and above signature

D. A. West

Witness to above signatures

would be hopeless, indeed, were she to tamely submit to the gross subversion of her sovereign will.

I have said that we are willing to abide by the compromises of the constitution. But these compromises are not all on one side. Whilst we are willing to leave the institution of slavery where the constitution left it—in the States—we are not willing to pour out our blood, and our treasure, and our honor, to continue, and extend, and perpetuate it.

We deny that there is any power in this government to interfere with it, one way or the other. The power to create necessarily implies the power to destroy. If you admit that there is power here to extend, the power to curtail necessarily follows; and you knock from under your "peculiar institution" the only prop which sustains it.

We believe that the fathers of this republic expected and intended that this blot upon our national character should be wiped out. That the "curse of slavery," as it was denominated by southern gentlemen in those good old days, when men dared to speak as they thought upon this, as well as upon all other proper subjects, should pass away. And we believe that "the measure of our country's glory" will not be full until the last shackle falls from the hands of the bondman.

But, sir, with this we have nothing to do. Slavery is purely a State institution; and when and how it shall be abolished, it remains with the States maintaining it to determine. All we of the North ask is, that you rid our hands of all participation in it. This we demand; and to this you must come.

But this measure is urged upon the score of expediency, and the manufacturing States of the North and the agricultural States of the West are promised an abundant market for their produce. The gentleman from Alabama [Mr. PAYNE] tells us that Texas is equal in fertility to the rich valley of the Mississippi, and is capable of sustaining a population of 5,000,000 of souls; and yielding an annual produce of $500,000,000. Of this, he exports one-third, or $166,000,000, and receives in return an equal amount of foreign manufactures, &c., yielding, under a horizontal tariff of 20 per cent., (for let it be borne in mind that we are to have a tariff of 20 per cent. when Texas comes into the Union,) $33,000,000 of revenue. And her public lands, amounting to 137,000,000 of acres, are all to sell for $1 25 per acre, and heap up an amount of dollars to which the wealth of Cræsus were but pin money. Now this must be a wonderful country—this Texas; and a wonderful people—these Texians! Five sites of a separate department, states in his official report that Texas is situated between 28 degrees and 35 degrees north latitude, and 17 degrees to 25 degrees of longitude west from Washington. In the legislative acts of Coahuila and Texas, the boundary of Texas commences at the mouth of the Aransaso, (the first stream north of the Nueces,) and follows that river to its source; thence in a line to the junction of the Medina and San Antonio, near Bexar, and following the Medina to its source; thence in a westerly line to Ghihuahua. By reference to Tanner's new atlas, published in 1844, these boundaries, thus adopted by Texas as a constituent member of the joint legislature, will be found to correspond with the line prescribed by Gen. Almonte. Mrs. Holly, in her work on Texas, written before the revolution, and while the boundary between that province and Coahuila was yet in controversy, and dictated by Stephen F. Austin, the founder of the settlement in Texas, and whose interest in and attachment for that department would naturally incline him to sustain its utmost pretensions, says: "Its latitude is from 28 to 34 degrees north, and is bounded by Louisiana on the east; by Red river, which divides it from Arkansas, on the north; by the Nueces river, which divides it from Tamaulipas and Coahuila, on the west; and the Gulf of Mexico on the south;" differing only from the boundary finally settled by Mexico and the joint legislature by claiming to the Nueces on the west, and falling short of it on the north one degree.

These boundaries, thus defined by Texas herself, whilst yet a province of Mexico, will embrace about 136,000 square miles, or 87,040,000 acres. (Lieutenant Emory, of the United States topographical engineer corps, computes that part of the the territory claimed by Texas, which lies east of the 100th degree of longitude, at 135,670 square miles, and the area embraced within these boundaries will vary very little from that amount.) Of this, according to the report of their land commissioner, made in 1839, 67,408,000 acres were then granted; leaving, at that time, about 20,000,000 of acres. Extensive grants have since been made, and many which were previously issued and held without the republic, have never been presented for adjustment, and are, of course, not included in the report of the land commissioner—together amounting, in all probability, to the whole extent of ungranted lands at that time. Besides, there are large tracts of country within these limits which are, and forever must be, entirely worthless—irreclaimable swamps, barren mountains, and sandy plains—to say nothing of the

It is not pretended that Texas acquired this territory by conquest, for she has never fought a battle, or marched a soldier beyond her original limits. Where, then, is the claim of Texas to this territory? It is an ideal claim, and is worth just as much as the paper upon which it is inscribed. And this is the territory out of which free States are proposed to be formed, according to some of the many projects before us, for all of them sedulously provide that Texas proper shall be untrammelled in this respect. And the plan of the gentleman from Tennessee, [Mr. BROWN,] to which the gentleman from South Carolina [Mr. RHETT] has referred as being the one most likely to receive the sanction of this House, provides that slavery shall not be prohibited south of 36° 30', the Missouri compromise line, and north of it only by and with the consent of the State of Texas—giving to the slave State of Texas the unqualified power of determining whether or not a single free State shall be erected out of the territory, even if it should happen that Texas extends to, and north of, the compromise line, and should be capable of sustaining a population sufficient to entitle it to the privileges of a State; which, from the mountainous and barren nature of the country, is utterly impossible.

But Texas proper does not extend north to 36° 30'—36° being the utmost limit prescribed by the government of Mexico, through its commissioner, General Almonte, and 34° by Colonel Austin, its co-proprietor and patron. And, as these resolutions propose annexing only the territory "rightfully belonging to the republic of Texas," it is not probable that, in an adjustment of boundary with the Mexican government, "upon the most liberal terms," as suggested by the President, a more northerly line will be obtained, particularly as no advantage would be gained by the South in pressing north, but all in extending it southwest. Then, where will be your free States. Let the people of the North look to this.

The honorable gentleman from South Carolina [Mr. HOLMES] declaims against placing limits to the extension of slavery. He says they must have the whole of Texas, so that when they impoverish one section of the country they may pull up stakes and move to another. This is all very candid in that gentleman, but where will it end, and what will be the result? Slavery has already impoverished one half of the old States, and it is hurrying an equal number of new ones to the same destiny. It is already crying out for more land upon which to continue its work of destruction. It has reached the bounds of the Union, and now demands that they

The Congressional Globe
January-February 1845, pp. 372-379

SPEECH OF MR. A.R. McILVAIN,
OF PENNSYLVAINA

In the House of Representatives, January 25, 1845 -- on the question of the annexation of Texas.

Mr. CHAIRMAN: Nothing but a sense of imperative duty to my constituents could induce me to ask for a *moment the* ear of this committee; particularly at this advanced stage of this discussion, when so little remains to be said. Could I have obtained the floor at an earlier period, I should have been glad to have examined this question at length; but as the time is near at hand when this debate must close, and as there are many who are anxious to be heard, I shall content myself with little more than a brief outline of my argument, reserving myself the privilege universally exercised of [?] up hereafter.

Sir, this is a great national question. And although gentlemen from the South, whether in the presidential chair, our diplomatic correspondence, or upon this floor, all unite in making it a local question, a southern question, a slave question, it is still a great national question. Its influences are as broad as the Union herself. They will extend to States yet to be carved from the primitive forest, and to millions of people yet unborn.

What is it? It is a proposition to break up the Union; to destroy the terms of the original compact; to uproot and forever destroy the relation between the relative influences of this government. It is to restore that preponderance to the South which it has enjoyed with few and slight interruptions from the foundation of our government; but which, from the silent operation of our respective policies, is passing from it. It is a proposition to bring into this Union, by a simple legislative act, a foreign government and a foreign people, equal in territorial extent to one-fourth of the entire Union.

Sir, the people whom I represent desire no such thing; and I believe I may speak with equal confidence for my entire State. They are in favor of the Union as it is; and they will maintain the constitution as it is, and all its compromises, so long as it is suffered to remain the fundamental law of this Union. But, if a new Union is to be formed; if the balance of power resting upon these compromises are to be distributed by the incorporation of new and foreign agents, then I will not venture to pledge her allegiance. She will speak for herself.

I have listened attentively to this discussion, anxious to learn by what construction of the constitution this ungranted power was going to be exercised; but I have listed in vain for even a plausible pretext. I am not one of those constitutional lawyers to whom the gentleman from South Carolina [Mr. RHETT] addressed himself the other day, but I have read that instrument, and have paid some attention to its history; and I have yet to discover that it gives either expressed or implied power to Congress, at least, to acquire foreign territory. It is even more than questionable whether the treaty-making power is competent to it, for the purpose of extending the Union. Mr. Jefferson, who was the first to try the experiment, under what appeared to be imperious necessity, was clearly of the opinion that the constitution gave no such power. And so anxious was he not to be misunderstood upon this subject, that he recommended an amendment to the constitution, or ratification of the act by the States -- not for the purpose of making valid the purchase, but to show to the future, and thereby destroy the effect of a precedent, that it was an exercise of power beyond the constitution.

The power to annex Texas is claimed by the friends of the measure to rest upon two grounds. First, that provision of the constitution which provides for the admission of new States into the Union; and, second, the vox popull.

The constitution provides that---

"New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of two or more States, or parts of the States concerned, as well as of the Congress."

Now, if there is anything indefinite in this provision, if it be supposed that the constitution was intended for other governments and other people than our own, its limits are clearly defined by the discussion which it elicited in the convention which framed it. I will not detain the committee by reading from books, but I affirm, and gentlemen can read for themselves, that the whole discussion upon this provision referred directly and in terms to our (then) territory -- territory belonging to the Union and the States, but which was supposed to be beyond their ultimate limits. And as no reference whatever was made to any other territory than our own as then existing, or to other States than those already formed, or likely to be formed out of it, it is fair to infer, indeed the conclusion is irresistible, reasoning from cause to effect, that if there had been no such territory, there would have been no such provision. Hence, if my premises be correct, the power to admit a foreign State into the Union under this provision of the constitution falls to the ground. For, to ascribe to the constitution powers which clearly were not intended by its authors, is as gross a violation of that instrument as the exercise of powers prohibited by it.

But, it has been argued by several gentlemen, in the course of this debate, that this article of the constitution was first presented to the convention in a definite form -- limiting this power of Congress to "the admission of States lawfully arising within the limits of the United States;" and that, inasmuch as this was rejected, and the present indefinite form substituted therefore, it was the intention of the convention to give to Congress the general power of admitting foreign as well as domestic States. But had those gentlemen examined the history of this provision with a desire to ascertain its true import, rather than to justify the conclusion at which they wished to arrive, they would have discovered that a form equally indefinite with that which was adopted was also rejected as a substitute; and that the whole controversy was altogether irrespective of the admission of States, but in reference to the propriety of giving to Congress the power of dismembering the existing States without their consent. And it is unreasonable -- nay, impossible -- that a proposition so important as that of giving to a bare majority of Congress power to extend the Union ad libitum, could have been proposed in that convention as a substantive proposition, and adopted by it without exciting discussion. But not the slightest allusion was made by any member of it to that power; no such power was given. And now for the popular voice.

We are told that the people have passed upon the question of annexation, and have given a verdict in its favor, and, therefore, we are bound to execute their will.

Sir, I deny the power of the people to extend the legislative powers of this government, except in the manner prescribed by the constitution itself, and short of the whole to engraft upon the constitution principles vitally affecting the original compact as to the dissenting states. To admit the first, is to uproot all organized government, and plant the ever-changing popular will in the place of our written constitution, and the latter to destroy the spirit of the voluntary compact of union in which the States were originally associated, and change confederacy into a consolidated despotism. But, sir I utterly deny that the people have decided this question, at least affirmatively. How does the question stand?

A majority of the representatives of the party which elected the incoming President, according to every principle of representative democracy, nominated Mr. Van Buren for the presidency, who was pledged in opposition to the annexation of Texas under existing circumstances; but, by some singular process of "progressive" democracy, the minority succeeded in forcing upon the party a candidate pledged to immediate and unconditional annexation; and, I admit, for the very reason that he was thus in favor of it. But, in the next moment, and by the same influence, to cover up this issue at the North, Silas Wright was placed upon the same ticket for the vice presidency; and this enigmatical ticket was heralded forth as the embodiment of democratic principles. Well, did this settle the question of annexation, as far as this party was concerned, affirmatively or negatively? When that convention declared in favor of James K. Polk, who was in favor of immediate annexation, and Silas Wright, who was opposed to it, was it intended as an expression for or against the measure? It was, to say the least of it, a non-committal expression.

But Mr. Wright, for reasons no doubt satisfactory to himself, very unequivocally declined the honor; and, in process of time, another was substituted in his place -- certainly not because he was in favor of immediate annexation, but irrespective of it altogether, and because he hailed from Pennsylvania, the second State in the Union in point of political influence. The bait had been offered to New York, and rejected by her; it was taken by Pennsylvania -- with how much honor to herself, I will leave it for others to say.

The election came around, and the nominees of this convention were constitutionally elected. But how? On the question of Annexation? No, sir.

In the Empire State, whose vote was considered indispensable to the success of Mr. Polk, and which did decide the contest, this great southern project was again inveiled [sic] in the negative mantle of Mr. Wright. And he, with all his great popularity and acknowledged worth, aided by a rigid party and discipline -- if not something worse -- was barely able to drag the Texas candidate within the distance pole, with a clear and undisputed anti-Texas majority against him of ten thousand votes. Is this a verdict in favor of immediate annexation? Suppose the fifteen thousand anti-Texas abolition votes in New York had been cast for Mr. Clay, the anti-Texas candidate -- as every principle of reason and philanthropy would seem to indicate that they would; where would have been your verdict? Mr. Clay would have been your next President, and, without the change of a single vote from Mr. Polk, we should have the popular verdict against Texas, according to your own theory.

But, to go further: Mr. Polk has a majority over Mr. Clay of about thirty-eight thousand, exclusive of South Carolina. According to the Globe -- which I suppose will be good authority in the case -- a fair estimate of the popular majority in that State is twenty five thousand, making a total of sixty-three thousand in favor of Mr. Polk over Mr. Clay. Now, according to the gentleman from South Carolina, [Mr. HOLMES,] who is no doubt correct in this matter, there has been an undoubted and unequivocal anti-Texas abolition vote of sixty-five thousand cast in the late contest, leaving a clear majority of two thousand votes against annexation.

But, besides this, there are thousands of voters in the North who are irreconcilably hostile to this measure, who, from some singular conception of duty, did not vote at all. Add to these another large class of voters who cast their votes for Mr. Polk under the talismanic charm of democracy, dissenting at the same time to many of the phases of the party creed, of which this question affords a striking instance, and you have a large popular majority against this measure.

How was it in Pennsylvania? Was Texas, immediate and unconditional, made the issue there? True, you might here ant there see the "lone star" floating over our own starts and strips. You might occasionally see a banner upon which was inscribed Polk, Dallas, Texas, and Oregon; but nowhere was Texas alone, Texas immediately and unconditionally, presented as one of the issues. "Polk, Dallas, and a protective tariff," "Polk, Dallas, and the tariff of '42," "Polk, Dallas, Texas, and no United States Bank" -- these were the issues presented by the democratic party. And now, votes thus faudulently [sic] obtained, under false pretences, are placed to the account of this Texas measure.

Sir, the people of Pennsylvania are not in favor of annexation in any form, and it is an unwarrantable assumption to infer from the late election that they are. Present to them the naked question of annexation, with its inevitable consequences -- the extension and perpetuation of slavery; the preponderance of the anti-tariff power, and consequent overthrow of the protective system; the assumption of an enormous and undefined foreign debt, and necessarily increased taxation; the adoption of a foreign war, and its train of consequences and burdens, with that other not inconsiderable consequence, dishonor -- and they will not show a "corporal's guard" in its favor.

Pennsylvania is able and willing to pay her own just debts, and she will pay them, but she will never consent to be taxed to pay the debts of other and foreign States. Her reliance is in her unbounded natural resources, and the energy, the industry, and the honesty of her citizens. But these resources can avail her nothing unless they are protected by the fostering hand of the government. Her iron, and her coal, and her industry must remain unproductive, if, by the overthrow of our protective system, her citizens are compelled to contend, side by side, with the cheap and degraded labor of the Old World. If in this struggle for power -- for this is, after all, the ultimate design of this Texas movement -- you give to the anti-tariff influence of this country (the South) renewed strength by the extension of that wing of the Union, by which she will be deprived of those advantages which she enjoys in common with her sister States under our protective laws, her case would be hopeless, indeed, were she to tamely submit to this gross subversion of her sovereign will.

I have said that we are willing to abide by the compromises of the constitution. But these compromises are not all on one side. Whilst we are willing to leave the institution of slavery where the constitution left it -- in the States -- we are not willing to pour out our blood, and our treasure, and our honor, to continue, and extend, and perpetuate it.

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But this measure is urged upon the score of expediency, and the manufacturing States of the North and the agricultural States of the West are promised an abundant market for their produce. The gentleman from Alabama [Mr. PAYNE] tells us that Texas is equal in fertility to the rich valley of the Mississippi, and is capable of sustaining a population of 5,000,000 of souls; and yielding an annual produce of $5,000,000. Of this, he exports one-third, or $166,000,000, and receives in return an equal amount of foreign manufactures &c., [sic] yielding, under a horizontal tariff of 20 per cent., (for let it be borne in mind that we are to have a tariff of 20 per cent, when Texas comes into the Union,) $33,000,000 of revenue. And her public lands, amounting to 137,000,000 of acres, are all to sell for $2.25 per acre, and heap up an amount of dollars to which the wealth of Croesus were but pin money. Now this must be a wonderful country -- this Texas; and a wonderful people -- these Texians! Five millions of people are to consume 166 millions of imports; whilst we, of twenty millions, consume but about 100 millions. Her population of five millions are to derive from their imports a revenue of 33 millions; ours of twenty millions, derive from the same source a revenue of but 26 millions. Her publiclands, [sic] her swamps, her barren mountains, and her impassable desert, which is to offer an impregnable barrier against an invading foe, are, every acre of them, to sell for $1.25; whilst, at this very moment, you have upon your table a bill to graduate and reduce the price of our own fertile lands of the West to one dollar, seventy-five, fifty, and even twenty-five cents an acre.

Texas, with a consumption of 166 millions of imports, might afford a market for some of the products of the "lords of the loom," who have received such repeated and respectful notice from the gentleman form Alabama; but how, with an agricultural production of 500 millions, it is to afford a market for this agricultural produce of the West, I am at a loss to conceive.

No, sir; the annexation of Texas to this Union, instead of giving to the manufacturers of the country a now and extensive market for their products, will give them a horizontal tariff of 20 per cent., as the gentleman has intimated; and to the agriculturists of the West, it will give increased competition to their labor. The worn-out lands of the South will be supplanted by the new lands of Texas in the growth of cotton, sugar, &c., and, in time, become the producers of the staple productions of the West; and instead of consuming their wheat, and their corn, and their pork, as now, they will product the same articles for the Texas market, if any market there be.

But what are the facts? Where is Texas, and what is it? Gen. Almonte, who was appointed by the Mexican government, in 1834, a commissioner to settle the question of boundary between Texas and the adjoining province of Coahuila, to which it was attached until it should acquire the prerequisites of a separate department, states in his official report that Texas is situated between 28 degrees to 25 degrees of longitude west from Washington. In this legislative acts of Coahuila and Texas, the boundary of Texas commences at the mouth of the Aransaso, (the first stream north of the Nueces,) and follows that river to its source; thence in a line to the junction of the Medina and San Antonio, near Bexar, and following the Medina to its source; thence in a westerly line to Ghihuahua. By reference to Tanner's new atlas, published in 1844, these boundaries, thus adopted by Texas as a constituent member of the joint legislature, will be found to correspond with the line prescribed by Gen. Almonte. Mrs. Holly, in her work on Texas, written before the revolution, and whilst the boundary between that province and Coahuila was yet in controversy, and dictated by Stephen F. Austin, the founder of the settlement in Texas, and whose interest in and attachment for that department would naturally incline him to sustain its utmost pretensions, says: "Its latitude is from 28 to 34

degrees north, and is bounded by Louisiana on the east; by Red river, which divides it from Arkansas, on the north; by the Nueces river, which divides it from Tamaulipas and Coahuila, on the west; and the Gulf of Mexico on the south:" differing only from the boundary finally settled by Mexico and the joint legislature by claiming to the Nueces on the west, and falling short of it on the north one degree.

These boundaries, thus defined by Texas herself, whilst yet a province of Mexico, will embrace about 136,000 square miles, or 87,040,000 acres. (Lieutenant Emory, of the United States topographical engineer corps, computes that part of the territory claimed by Texas, which lies east of the 100th degree of longitude, at 135,670 square miles, and the area embraced within these boundaries will vary very little from that amount.) Of this, according to the report of their land commissioner, made in 1839, 67,408,000 acres were then granted; leaving, at that time, about 20,000,000 acres were then granted; leaving, at that time, about 20,000,000 of acres. Extensive grants have since been made, and many which were previously issued and held without the republic, have never been presented for adjustment, and are, of course, not included in the report of the land commissioner -- together amounting, in all probability, to the whole extent of ungranted lands at that time. Besides, there are large tracts of country within these limits which are, and forever must be entirely worthless -- irreclaimable swamps, barren mountains, and sandy plains -- to say nothing of the Spanish and Mexican grants, which covered the almost entire surface of the country before Texas had granted an acre. Some of these grants have been forfeited, and reverted to the original proprietary; but many remain unimpaired. And from the fact that all the recent surveys have been made beyond Texas proper, it is evident that there remains no saleable land unappropriated within its borders. Hence it is clear that if Texas shall acquire public domain to pay her debts, it will be by robbing Mexico of parts of her adjoining provinces. And this is the treasure held up to "the cupidity of the North," to induce her people to pay the debts and fight the battles of Texas; for, disguise it as you will, if Texas comes into this Union, we are bound for the payment of her foreign debt. We swallow up her national sovereignty, and assume her liabilities. A transfer of sovereignty can no more liquidate its obligations, than a transfer of property will those resting upon it. This is a principle of international law universally acknowledged by all civilized governments, and one which we could not, if we wished, escape.

But we are told that Texas, by an act of Congress, has defined her bounds, and embraced within her limits a much larger extent of territory. So she has; but what right had she to do so? It was Texas that revolted against the government of Mexico; it was Texas that achieved her independence upon the plains of San Jacinto; it was Texas that we have recognised as an independent State; and it is Texas that you propose annexing to this Union; and if you adopt these resolutions, you will annex nothing but Texas.

An assertion of independence by Texas can give her no claim beyond her just limits; and as well might the "old thirteen" have, by act of Congress, thrown a title over all the surrounding provinces of Great Britain, or Louisiana and the Floridas, as Texas over parts of adjacent provinces which had not been associated with her in the revolutionary struggle, nor ever acknowledged her jurisdiction.

It is not pretended that Texas acquired this territory by conquest, for she has never fought a battle, or marched a soldier beyond her original limits. Where, then, is the claim of Texas to this territory? It is an ideal claim, and is worth just as much as the paper upon which it is inscribed. And this is the territory out of which free States are proposed to be formed, according to some of the many projects before us; for all of them sedulously [sic] provide that Texas, proper shall be untrammelled in this respect. And the plan of the gentleman from Tennessee, [Mr. BROWN,] to which the gentleman from South Carolina [Mr. RHETT] has referred as being the one most likely to receive the sanction of this House, provides that slavery shall not be prohibited south of 36°30', the Missouri compromise line, and north of it only by and with the consent of the State of Texas -- giving to the slave State of Texas the unqualified power of determining whether or not a single free State shall be erected out of the territory, even if it should happen that Texas extends to, and north of, the compromise line, and should be capable of sustaining a population sufficient to entitle it to the privileges of a State; which, from the mountainous and barren nature of the country, is utterly impossible.

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We are told that we must annex Texas in order "to extend the area of freedom;" and any one not conversant with the facts would infer, from the arguments here and elsewhere, that the people of that country were not now enjoying political freedom. But, having a republican government similar to our own, and her independence claimed by all who advocate immediate annexation, how, if freedom mean [sic] republican liberty, can its area be extended by the union of the two governments? It is absurd -- it is mockery.

SPEECH OF MR. E. slavery. HAMLIN, OF OHIO.

In the House of Representatives, January 9, 1845, On the Annexation of Texas.

MR. CHAIRMAN: I need not say that this is an important question. The interest which it has excited, and now excites here; the deep feeling which every where pervades the American people on the subject; the anxiety, the forebodings, with which they look for the result of our deliberations, should make us realize that the responsibility resting upon us is one of no ordinary character. The question is one of no ordinary character. The question is, whether our old ship of state shall be launched upon an unknown sea -- shall sail upon an unknown voyage. For one, I am afraid of storms, of rocks, and quicksands. I prefer that she shall still pursue the beaten track; that she shall keep near shore, where heretofore, she has pursued her course in safety, well laden with rich and valuable cargoes.

It is not for me to attack those who desire to try a dangerous experiment. I shall not impeach the motives of any man, of any party, or rail at the doings of any party. Neither shall I denounce any man, or party, or State, as having lost all sense of honor and patriotism; neither my taste, nor charity, nor age, nor the little judgement I have, will permit me to do it. I shall express my views of the question before us in as few and simple words as I can command, but fully, frankly, and fearlessly.

At the threshold we are met by a constitutional objection, to my mind insurmountable. Take each and all the propositions before us -- the resolutions introduced by the chairman of the Committee on Foreign Affairs; the resolutions introduced by the gentleman from Illinois, [Mr.DOUGLASS,] founded upon the principle that the treaty of 1819 is void; or take the resolutions offered by the gentleman from Ohio, [Mr. WELLER;] or the various resolutions and bills authorizing the people of Texas to form a constitution, and annexing it as a State; take any and all of them, and they amount to nothing more nor less than this: a proposition made by the United States, to be accepted by Texas, before annexation takes place. Now, what is a proposition made by one party, and accepted by another, but a bargain, a contract, a treaty? And this bargain, this treaty, is to be made between two independent nations. It is too late to say that Texas is now a part and parcel of the United States; that "it is bone of our bone, and flesh of our flesh." I care not whether it was once a part of us or not. If it were, it has been cut off by treaties to which we, and the people of Texas, have consented, and acted upon. We are estopped from taking this position by having acknowledged its independence, and by to-day having our charge de affaires, our national representative, at its seat of government, and receiving and negotiating with its minister here. It sounds strange to hear gentlemen argue in one part of their speeches that Texas was once ours, and has never been dismembered from us, and in another part, that it is an independent nation; that we have acknowledged its independence, and that,

therefore, we have a right to annex it to us, and Mexico has no right to interfere. It is either independent, or it is a part of Mexico. Look at it in whichever light you please, it can only become ours by a treaty made with it, or Mexico, or both. Where, then, by our constitution, is deposited the power to make treaties with a foreign nation? This is the great question here now before us. It is not, where is the power to make a bargain with individuals, or with one or more of the States; but where is the power to make a bargain with a foreign nation? Let us look to the constitution itself, and what does that say? Does it confer this power upon Congress? Far from it; so far, that it expressly confers it upon the executive and Senate. The second section of the second article reads, that the President "shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur. What can be more plain, more specific? Here, then, it is expressly deposited. Our fathers, in their wisdom, placed it here. If they have erred, let us amend the constitution, but let us not set the example of violating it.

I know it is said that Congress can borrow money of foreign nations, and that the borrowing of money is a contract; and, if borrowed by Congress of a foreign nation, it is said that it would be forming a treaty with it. Admitted. What does it prove? Does not the constitution expressly confer this power to upon Congress? Does it not say, in so many words, that Congress shall have power "to borrow money on the credit of the United States?" And is it not from this express grant that the power is derived? And will any one contend that, when the constitution has conferred upon one department of the government a general power to make treaties with foreign nations, and has at the same time conferred upon another department power to form a treaty for one particular object, in consideration thereof this other department may take to itself a general power to form treaties in all cases? The very fact of conferring upon Congress this power to borrow money, shows that without it Congress would not act in the case; and, instead of weakening, it greatly strengthens the argument against its power to form this treaty of annexation. To help the gentlemen, they should show an express power to do it, in the same manner that we show an express power to borrow money.

But it is contended that that clause of the constitution, which authorizes Congress to admit new States into the Union, confers a general authority to admit foreign States. If that be the case, why is the word, "new" used? Why not say, Congress may admit States or nations into the Union? Why use the word "new?" Did the framers of the constitution wish to show more favor to new nations that should spring up, than to old ones then in existence? And why use the word States? Why not use the phrase "foreign States or powers," as in everywhere else used in the constitution, when reference is made to foreign nations? Whoever will look with an eye single to the discovery of the truth, at the situation, of the country at the time the constitution was formed, cannot fail, it would seem to me, to perceive, that the sole object of the grant of this power was for the purpose of admitting such new States as should be carved out of the territories belonging to the United States, and those formed out of portions of the old States. And I am strengthened in this opinion by the fact, that this power is contained in the same section which authorizes Congress to take care of and dispose of the territories and other property belonging to the United States; and no other power is granted in said section.

There are others who contend that, although this grant of power to Congress to admit new States does not confer power to admit foreign States, yet, that Congress may purchase territory out of which new States shall be formed, and that this power is being implied, being necessary and proper to carry into effect the express power to admit new States. But is it necessary and proper that Congress should possess such power? Why? Do not these same persons admit that the power to purchase foreign territory is expressly granted to the executive and two-thirds of the Senate? Or are they now going to deny that Texas can come in by treaty? And, if foreign territory can be acquired by treaty, what necessity is there for Congress to possess the power to purchase it? There can be none, only, that the Senate, in their wisdom and patriotism, refuse to sanction the purchase -- the treaty. Here, then, "is the rub." Members in this House, because the Senate refuse to exert a power, which they admit is expressly granted to it, in such a way as shall please them, are determined to imply, usurp, and exert the power themselves, and do the thing they want done. And that is the reason, the sole and only reason, why this measure has come before us. And has it come to this, that when one department of this government refuses to exert its power to accomplish an object desired by another department, that this department may imply in itself power to do the thing, and do it? If so, we may as well bid farewell to our liberties at once. WE may as well consolidate all the departments into one, and then we shall soon have a government without any balances and checks -- a despotism of the worst kind. And these men, who would thus imply a power in one department to do what another department is expressly

authorized to do, belong to the school of strict constructionists! They are State-rights men! Sir, no whig, no federalist of olden time, ever carried the doctrine of implied powers to such an alarming extent. This is "progressive democracy," with a vengeance.

I know that there are some who think that if the government posses power to purchase territory of a foreign government, it is of little or no consequence what department of the government exercises the power. I differ entirely from these. The power to make contracts with foreign nations is one of the highest order, of the utmost importance. When once made, they are unalterable, irrepealable. The power to enter into them, therefore, should be removed as far as possible from party influences and momentary and transient excitement. If Congress, under the heat of a great political contest, or in view of one, or to carry out pledges made in one, pass a foolish and impolitic law, the evil is not incurable. The same Congress, or a subsequent one, may alter, amend, or repeal it. But not so with a treaty. It is like the laws of the Medes and Persians. What, for instance, is proposed to be done in this case? Nothing less than to merge a foreign nation in our own; to assume its war, its debts, its treaties, and all its known and unknown obligations; to enter into a contract with a foreign nation, which is to be the fundamental law for all generations. Where should the power to do this be placed, if, indeed, the people should trust it anywhere but in themselves? If our fathers, the framers of our sacred -- perhaps I should say *once* sacred -- constitution, have placed it anywhere, it is where it should be, and that is, with the President, who is elected by all the people; who, with his cabinet, composed, as it always should be, of the wisest and best statesmen of the nation, has time to give it cool, dispassionate, and full consideration; and after that with the Senate, with those who are elected from each of the States, whose tenure of office is supposed to the sufficiently long to lift them above party influences and personal interests, where it must undergo the close scrutiny and calm deliberation of the most elevated legislative body in the world, and then receive, not simply the approbation of a majority, but the approbation of two-thirds of the members of that body. And even if there were nothing in the nature of the act to be done that required so many safeguards to be thrown around it, the great danger arising from one department of the government usurping the powers of another, ought to be sufficient to deter us from acting in this case. Hear what President Washington says in his farewell address, on this subject:

"It is important that the habits of thinking in a free country should inspire caution in those intrusted with its administration, to confide themselves within their respective constitutional spheres, avoiding in the exercise of one department to encroach upon another. The spirit of encroachment tends to consolidated the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism. The necessity of reciprocal checks in the exercise of political power, by dividing and distributing it into different depositories, and constitution each the guardian of the public weal against invasion by the others, has been [unreadable] by experiments ancient and modern; some of them in our country and under our own eyes. To preserve them, must be as necessary as to institute them. If, in the opinion of the people, the distribution or modification of the different powers be in any particular wrong, let it be corrected by an amendment in the way which the constitution designates. But let there be no change by usurpation; for, though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must greatly overbalance in permanent evil any partial or transient benefit, which the use can at any time yield."

This, sir, is the language of one who, "though dead, yet speaketh." It comes to us like a voice from the other side of Jordan, to which we should listen. It would almost seem as if the father of his country, when he wrote this address, was wrapt in prophetic vision, in which he had a full view of the present situation of this nation, and of the measure now before us; in consideration of which, he was led to "give us line upon line, and precept upon precept," and especially in the extract which I have just read, and in that part of it where he enjoins upon us to deal justly and fairly with all nations; stating it to be not only the dictate of morality and religion, but also of sound policy; urging us to make the experiment, as being recommended by every sentiment which enobles human nature; and yet exclaiming, as if almost faithless, "Alas! is it rendered impossible by its vices?" Well might he exclaim, alas! alas! for scarcely has the sound of his voice died upon our ears, before his precepts are forgotten, and his example is unheeded. I recommend to gentlemen to read that address carefully, as if in his presence, before they cast their votes on this important measure.

Another sentiment has been advanced here, calculated to create alarm in the bosom of every friend of constitutional government. It is this: that there exists in Congress a power which is above all laws and all

constitutions -- the power of self-preservation. This doctrine was advanced by the gentleman from Alabama, [Mr. BELSER,] who first addressed us from that State. The same principle was also advanced and advocated by another gentleman from Alabama, [Mr. PAYNE.] He stated that in every nation there must exist a self-preserving power; and that that power must be in Congress, as the people had placed it nowhere else. Now, that there exists in every nation self-preserving powers, no one will dispute. The powers conferred upon Congress are self-preserving powers. They are to preserve our lives, our liberty, our honor, and our property. These are ourselves, and all there is in and of and belonging to ourselves worth preserving; and I believe the government of the United States is possessed of sufficient constitutional powers to preserve all these. We have tried it now for many years. We have tried in peace and in war, and it has never failed us, and I think it never will, while honestly and faithfully administered. But suppose it should fail us; where then are the remaining self-preserving powers, and how are they to be used? The constitution tells us where they are. Article the tenth, of the amendments to the constitution, says 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." No, no, say both the gentlemen from Alabama, they belong to Congress. But the constitution does not say so; it says they belong to the States respectively, or to the people. Which shall we credit? With great deference to the opinions of both of those gentleman, I must still be permitted to bow to the constitution. But the constitution not only tells us where those powers are, but also in what manner they are to be used; and that is, by amending the constitution in the way pointed out in the instrument itself, whenever it shall be found to be inadequate to give due protection to the people, and to all the interests of the country committed to the keeping of the general government.

Another gentleman [Mr. INGERSOLL] advanced a similar doctrine. He said "that public sentiment was the great law of this and every free country, and is much better than any written law." Now, I contend that public sentiment and the constitution -- or, in other words, the written law to which he referred -- are one and the same thing. The constitution is the embodiment of public opinion in regard to our powers. We are to look to that instrument as the recorded and solemnly pronounced verdict of public sentiment, as to the nature and extent of the powers of this f. When we wish to know our powers we must go to this instrument; we must listen to its voice; we must be deaf to every other sound, come from whence it will; through this channel, and this alone, public sentiment on this subject must be conveyed to us. If public sentiment change, then let change the constitution in the mode and manner pointed out by the people in that instrument itself. When this is done, no one will bow to it with more pleasure than I will. But let no one urge upon me, that there is a public sentiment which calls upon me to violate the constitution, and that I must obey it. I never have been sworn to obey any such public sentiment. I am sworn to support the constitution; and the constitution I will support as it is, even if public sentiment be against me, until it assumes a legal form, and speaks to me through amendments to that sacred instrument. And I see not how any one can do otherwise, who regards the oath he has taken, and who does not "love the praise of men more than the praise of God," and the approbation of his own conscience. But there is no such public sentiment as is spoken of, requiring us to violate the sentiment as is spoken of, requiring us to violate the constitution to annex Texas to this Union. It is not the effervescence arising from every commotion, at every presidential election, that forms public sentiment; it requires many second sober thoughts to form it.

And now, Mr. Chairman, why are we called upon to violate the constitution, to usurp the powers of another department of the government, and the reserved powers of the States and the people? What great interest is in danger? What great calamity is about to befall this nation? Why is the annexation of Texas to be brought about by such unconstitutional means? It is well for us to look at the reason -- at the true reason -- why this is to be done. I know that it is contended, that the mechanic and manufacturing interests of the North require Texas to be annexed; and this argument is constantly urged upon us by southern men. They appear all at once to feel a wonderful sympathy for the prosperity of these interests. A gentleman from Alabama [Mr. PAYNE] went extensively into figures, to show how great would be the advantages to be derived from this measure to these northern manufacturers. And yet it is only a few days since this same gentleman declared upon this floor uncompromising war upon the tariff by which they are sustained, and declared that millions of swords were ready, if necessary, to leap from their scabbards to destroy it; and yet he urges the annexation of Texas, for the purpose of benefiting these manufacturers! Sir, when I hear these southern free-trade men urging this measure for these reasons, I always feel uneasy about the "fifth rib."

Again, it is urged, because it will make a market for the productions of agriculture, and will increase our commerce. Men seem to argue as if the people of Texas never would want anything to eat or wear, unless they should come into this Union. For one, I believe that Texas free -- I mean free from s, as I believe she soon will be if not annexed -- would require more of our manufactures, our agricultural productions, and give more impetus to our commerce, than if she should be annexed, with her energies crushed by that institution.

[line not legible] out of sympathy for the people of Texas. Gentlemen, at the same time that they urge this argument, tell us that she is independent; that Mexico never can reconquer her; that England is offering her great commercial advantages, if she will only refuse to be annexed; and that her people are wise and brave, and have established a constitution like our own, except that they have made some great improvements. If all this be true, (and I have no disposition) to deny it, they are certainly better off than they would be, if annexed to this country. Let them enjoy, I say, their better constitution, their great commercial advantages, and the honors which by their bravery they have won. Let them live in peace; why bring them into this country, to be participants in the great contest now going on between liberty and slavery here, and which will convulse this nation in all its length and breadth for years to come?

Lastly, it is urged that we must annex Texas for the purpose of extending the "*area of freedom,*" and this brings me to the true reason which urges on the friends of the measure. This cry about extending the area of freedom is not a new cry. It was first gotten up by Mr. Murphy, our charge d'affaires in Texas. In a letter directed by him to Mr. Upshur, then Secretary of State, after stating that England was striving to bring about an amicable arrangement between Mexico and Texas, which, he says, "would liberate at once all the slaves of Texas," he asks, "If the government of the United States can longer doubt what to do?" He says that the constitution of Texas secures to the master the perpetual right to his slave, and prohibits the introduction of slaves into Texas from any other quarter than the United States; and says, if the United States will take their position on the side of the constitution and laws, and the civil, political, and religious liberties of the people of Texas secured thereby, (saying nothing about abolition,) all the world will be with her. And again: "Saying nothing which can offend even our fanatical brethren of the North, let the United States espouse at once the cause of civil, political, and religious liberty in this hemisphere. This will be found to be the safest issue to go before the people with." Here, then, is the origin of the cry of extending the area of freedom. And what did it mean in its first conception? Simply this, that slavery must not be abolished in Texas. And it has not changed its meaning yet. It is to prevent the abolition of slavery in Texas that its annexation is urged upon us. This is the great controlling reason. Were it not for perpetuating slavery in that country, we should hear no more of this measure. I know that gentlemen strive to keep this reason concealed from the eyes of the people; they do not wish to have it brought to light in this House; they are afraid of its effect on the people in the free States, and their representatives here. But the veil must and shall be lifted, and the true object in view exhibited in all its naked deformities. It is hinted at it, when he spoke of the peculiar institutions of the South being in danger, when remarking upon the existence of a self-preserving power above all laws and constitutions; and also another gentleman, [Mr. PAYNE,] when he spoke of a southern institution, whose name was not to be mentioned by southern men upon this floor. In order to understand fully the object of this scheme, we must go back to its inception, we must examine the correspondence in which it originated.

The first letter upon this subject is a communication, made by Mr. Upshur, then Secretary of State, to Mr. Murphy, our charge in Texas. In this letter he states that he has information of a project on foot, by the abolitionists of England, for the abolition of slavery in Texas, by loaning a sufficient sum of money to indemnify the slaveholders for their loss in setting them free, and that Lord Aberdeen has agreed that the British government will guaranty the payment of the interest upon this loan if Texas will abolish slavery. Now, one would have supposed that this free government of ours -- this government, whose principles are destined to overturn the tyrannical governments of Europe. For one -- and in declaring it, I think I only speak the sentiment that swelled the bosoms of our revolutionary fathers -- I not only wish that money sufficient had been raised to set the slaves free in Texas, but I would to God that sufficient was raised to free our own slaves, and liberate the down-trodden in all lands. But such were not the feelings that animated the bosom of Mr. Upshur; on the contrary, he declares that "if cannot be permitted to succeed, without the most strenuous efforts on our part to arrest a calamity so serious to every part of our country." And he concludes by telling him, "that he is very desirous to impress this subject upon his attention; that it is worthy of his most vigilant

care: and that few calamities could befall this country more to be deplored, than the establishment of a predominant British influence, and *the abolition of domestic slavery in Texas*."

He then writes to our minister in England, Mr. Everett, and instructs him to have an interview with Lord Aberdeen, and discover "the intentions and measures of that government in reference to African s." Lord Aberdeen very frankly declares, that England was of one mind in wishing the abolition of slavery throughout the world, and that she had long been pledged to encourage, so far as her influence extended, the abolition of slavery in every proper way; and that the British government had recommended to Mexico to acknowledge the independence of Texas, on the condition of slavery being abolished there. Was not this a noble stand? Ought not our government to have met her half way? Ought not those of us who have so much sympathy for the welfare of that young republic, and such all-powerful desires to extend the area of freedom, to have united our efforts with those of England, and procured the acknowledgement of the independence of Texas, and the abolition of slavery there? Did we do so? The time was favorable: an armistice was concluded between Texas and Mexico, and negotiations for peace were in progress between the two nations. What a fine opportunity to have exhibited our benevolence, and our love of freedom. Did we embrace it? Far from it: on the contrary, Mr. Upshur immediately wrote a letter to our charge in Texas, exhorting the people of that country to hold on to their present position; that the administration here was very anxious to go their support; and immediately made propositions for the annexation of Texas to this country. Is more testimony wanted? Does not the reason for annexation stand forth as clear as the sun at noon-day? And is not that reason to prevent the abolition of slavery in Texas?

But if more evidence is wanted, it can be furnished; and that, too, from an authority which will not be disputed. Mr. Upshur, in the midst of this negotiation, was called suddenly to his last account. Mr. Calhoun was appointed to fill the station of Secretary of State. By him the treaty of annexation was concluded. He knows why it was done. And now let us look at the reason as given by him. In a letter to Mr. Pakenham, communicating to him the fact of the conclusion of the treaty, he says: "The President looks with the deepest concern upon the avowal of Lord Aberdeen, of the desire of Great Britain to see slavery abolished in Texas, and as he infers, is endeavoring through her diplomacy to accomplish it, by making the abolition of slavery one of the conditions on which Mexico should acknowledge its independence. That he has become settled in the conviction that it would be difficult for Texas, in her present condition, to resist what she desires; and that he feels it the imperious duty of the federal government to adopt the most effectual measures to prevent it; that for this purpose he has formed a treaty of annexation; and that this step has been taken as the most effectual means of guarding against the threatened danger." And in a letter to Mr. Green, then our representative in Mexico, communicating the same fact, he says: "This step was forced on the government of the United States in self-defence, in consequence of the policy adopted by Great Britain in reference to the abolition of slavery in Texas; and that it has been compelled to take this step as the only certain and effectual means of preventing it." In view of all this testimony, will any gentleman deny that the object of annexing Texas is to prevent the abolition of slavery there? I might accumulate testimony to sustain this point, by giving further extracts from the correspondence of the government with foreign nations on this subject of annexation, and from communications made to it by private individuals. In one of these letters, from a government in Texas to the Secretary of State, it is said:

"The line between Texas and the United States will form the slave line within five years after a commercial treaty shall be formed with Great Britain and that by our own free will, and still sooner, if we are left alone to take care of ourselves; for we cannot go into another war with Mexico, and leave our families at home, exposed to the dangers of a slave population; and we never will surrender the country to Mexico while one man is left to fight."

We are all familiar with the correspondence between Mr. Calhoun and Mr. King, our minister to France, on this subject. The whole scope of it is to show that the reason of our favoring annexation is to sustain slavery, and to persuade the nations of Europe not to interfere and obstruct our efforts to accomplish this object. For this purpose, he makes this government stand forth unblushingly before the nations of the earth the defender of slavery; other nations are solicited to join with us, and to aid us in obstructing England in its efforts to abolish slavery throughout the world. Is it not humiliating that this young republic, rocked in the cradle of liberty, the offspring of that great fundamental principle of human rights -- "that all men are born equal, and have certain inalienable rights, among which are life, liberty, and the pursuit of happiness" --

ere it has arrived to manhood, should walk forth, before the nations of the earth and solicit them to join with him, and say to freedom, as it pursues its onward course, "thus for shalt thou come, and no farther?" Let us hereafter hide our heads for shame, and never more talk of our institutions as being destined to revolutionize the nations of the earth -- to cause thrones to totter, and tyrants to tremble. No stranger can read the correspondence to which I have referred, and not feel that we have no other God in this country but the God of slavery; that before this heathen deity, the present Secretary of State especially bows his proud knee and chivalrous soul, and sings hosannas and hallelujahs, day and night, without ceasing.

It would seem to me that no one can examine this mass of testimony, and not come fully to the conclusion, that the object had in view in annexing Texas to this Union, by the active friends of this measure, is to prevent the abolition of slavery in that country. The question then arises, whether Congress ought to annex it for that purpose; whether this government should interpose its power and exert its means to prevent the spread of liberty.

It is contended by the friends of this measure, that this government ought thus to interpose, and indeed is bound to do so, because the abolition of slavery in Texas would greatly weaken, if not eventually overthrow, that institution in the slave States; and that, as slavery is guarantied [sic] by the constitution of the United States, Congress is bound to use all the necessary means to prevent its overthrow. I shall not stop here to inquire what effect the abolition of slavery in Texas would have upon slavery in this country; but I deny, utterly deny, that the constitution of the United States guaranties the existence of slavery in the States, or anywhere else. A guaranty of the continued existence of anything requires the guarantor to act to preserve that existence. Is Congress by the constitution bound, or even authorized to act to preserve slavery in the States? To determine this question, we must go to the constitution itself. The first provisions which are referred to which have any bearing upon this question, are those provisions of the first and second articles of the constitution which confer upon the southern States political power, in consideration of their slaves, equal to three votes for every five slaves they own; and it is contended that the grant of this privilege is a guaranty on the part of the constitution of the existence of slavery. But how, and in what respect, does it guaranty slavery? By it, is Congress called upon to act to preserve it? Not at all. No one ever imagined any such thing. Slaveholders never thought it did. If they thought so, why have they not called upon Congress to interpose to prevent the abolition of slavery in those States where it has been abolished since the adoption of the constitution? Does not the abolition of slavery in the States as much endanger that institution in other States as it would be endangered by its abolition in Texas? And if Congress is bound to interpose to prevent it in one case, why not in the other? But there is no guaranty here, any more than it would be guarantying the existence of horses or cattle, if the constitution had conferred upon the northern States political power equal to three votes for every five of these they owned. While they should exist, the power would exist. When they should die, or be otherwise disposed of, the power would cease. The States might have no right to call upon Congress to help preserve them. That is not in the bond.

Again, it is said that by the fourth section of the sixth article of the constitution, the US are bound, "on application of the legislature, or of the executive, when the legislature cannot be convened, protect each of the States against domestic violence." Admitted. It is asked, then, if in this case, Congress is not bound to act. Most certainly. Well, is it not bound to act to put down domestic violence, if the slaves should rise in insurrection? Most assuredly it is. Then it is asked, would not this be guarantying the existence for slavery? The answer to this question depends upon the solution of another, and that is, whether, if Congress should not interpose in such a case, the slaves could obtain their liberties by insurrection. If they could not, then this clause of the constitution does no guaranty its existence, directly or indirectly. I hold, that the slaves never can obtain their freedom by insurrection. I believe that an insurrection among them would only lead to the extermination of a great portion of them, and riveting the chains of slavery upon the balance more firmly than ever. In saying this, I speak what I believe the result would be, if the slave States should be left entirely to themselves. Success in battle no longer depends upon physical strength. "The race is not to the swift, nor the battle to the strong." Improvements in the instruments of war have changed the influences that give victory. Attacked by those possessed of these instruments, and a knowledge of the use of them, the poor ignorant slaves would be cut down like the grass of the field. No, no, sir, slavery is not to be abolished by insurrection among the slaves. Antislavery men look to no such means for abolishing it in the States. He must be a madman, a fanatic, indeed, who would stir up an insurrection among the slaves for this purpose.

The sooner such an insurrection should be quelled, the better it would be for the cause of freedom itself. And neither the United States, nor any citizen of the free States, who should aid in quelling it, would be guilty of sustaining slavery; for slavery, whether that aid be given or not, cannot be abolished by insurrection.

But there is another view to be taken of this clause of the constitution. The provision is necessary to the very existence of the government, whether slavery exist [sic] or not. Should the government of a State be overturned by domestic violence, the United States government itself would feel the shock; an inroad would be made upon its organization, and a wound inflicted threatening its existence. In exercising this power, therefore, it would do it, not to prolong slavery, not to guaranty its existence, but to preserve itself -- its own existence, and a republican form of government in the States. It is not contended that this government may not do, and is not bound to do, many things, the incidental effect of which may be to strengthen slavery. All that is contended for is, that it has no right to do, and is not bound to do anything, the object of which is, either directly or indirectly, to sustain slavery. It may levy a duty upon imported cotton or sugar, the incidental effect of which may be to raise the price of slave labor, and thus, in some measure, may incidentally sustain slavery; but it has no right to levy these duties for the purpose of sustaining slavery. Nor, in so doing, does the government partake of the guilt of slavery. Men are not, and cannot be made, responsible for all the effects which may incidentally flow from their acts. The incidental effect of Paul's preaching so long at Troas was, that a young man, who sat in a window, fell into a deep sleep, and fell down from the third loft, and was taken up dead; yet Paul was not guilty of his death. Governments and individuals are responsible for effects consequent on acts, the object of which was, either directly or indirectly, to produce them; and here their responsibility ceases. So the obligation to quell domestic violence by this government does not guaranty the continuance of slavery, nor make it responsible for its existence, although the incidental effect of it should be to prolong, in some measure, that institution. It would simply be doing right, although some evil consequences might ultimately flow from it.

Again, it is contended that that part of the second section of the fourth article of the constitution, which provides that "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," guarantees the existence of slavery in the States. Let us dissect this provision and see whether it does or not.

I admit, that by the phrase, "persons held in service," slaves are intended, as well as apprentices. But before this clause can apply at all, the slave or apprentice must escape from the State by whose laws he is held to service, into another State. If he be carried there by his master, or go by his consent, it does not apply at all, and he is free and cannot be taken back. Say, then that he is a slave, thus escaped: what is his condition? By the common law, which was in force in all the States at the same time the constitution was formed, he would be free, and the master could not take him back, in the same manner that he is free now, when he goes into another State with the consent of his master. This provision repeals, annihilates, or destroys so much of this common law as applied to slaves or apprentices escaping, and renders null and void any law which a State shall pass, to revive the common law, or in any respect to discharge them from the service or labor due to their master. It requires no action on the part of the government. It simply permits the master to go after his slave where he could not go were it no for this provision. It no more guaranties slavery than I should guaranty a man's title to his farm, by permitting him to come upon my land and get a deed which had been taken from him and carried upon my premises, or should permit him to come upon my premises and get a sheep which had escaped from his enclosure. I know it is contended that that part of the clause which says, that he shall be delivered on claim of the party to whom such service or labor may be due, requires action on the part of the government. What action, I ask? Of whom is this claim to be made? No of the government. The government has not the possession of the runaway. The claim is made by the owner taking possession of his slave; and all the delivering up there is or can be in the case, is, that no one shall interfere to prevent his taking him. Suppose the law should say, as it in fact does, that, if my neighbor's horse gets into my field, on claim of the owner, I shall deliver him up to him; what would, what does, this require me to do? Just nothing. I should fulfil the law by simply permitting the owner to take him away. And this is all the people of the slaveholding States can ask of the United States government under this section -- simply that they shall be permitted to catch, if they can, and take back, if they can, their runaways, without the interference of the State, or the people of the State, into which they escape. That this is the meaning of this

clause of the constitution, is evident from the provisions of the statute passed by Congress relative to fugitives -- a Congress composed of many of the able men who formed the constitution of the United States. This does not aid the master in the least in taking his slave. It simply prohibits any person from obstructing him in doing it, and provides how he may obtain a certificate, which shall be evidence that he belongs to the owner, that persons may know this fact, and not prevent him from taking his fugitive back to the State from which he fled.

We have thus surveyed all the provisions of this constitution which are claimed to guaranty slavery. In none of them is any guaranty given. None of them require any action on the part of the United States government, either to extend or perpetuate slavery, much less that we shall annex a foreign nation to us for that purpose.

It is claimed, however, by some southern gentlemen, that slavery is a national institution, and, as such, that we are bound to sustain it. This sentiment was very confidently advance by the gentleman from Alabama, [Mr. YANCEY.] It sounds, certainly, to us northern men, very strange to hear this institution called a national one by our southern bretheren. It is but a short time since, that, if a northern man had anything to do or say about it, he was in danger of being lynched. Then it was declared to be a State institution, and that neither we nor this government had any right to meddle with it. The cry of Southern men then was, like that of the man who "dwelt among the tombs" -- "let us alone, what have we to do with thee" -- and they drove us out of their coasts; but now, forsoth, it has become a national institution, and they call upon us for aid -- not, indeed, to "cast out their devils," but to help keep the evil spirit of slavery in them. What has produced this change? Have they learned by the last census that they have become the weaker vessel, and are destined to grow weaker and weaker? Do they find "their bed so short, that they cannot stretch themselves upon it; and their covering so narrow, that they cannot wrap themselves in it!" A change has come over the spirit of their dreams. They begin to feel, not merely that they cannot walk alone, but that they cannot walk in our company without leaning upon our shoulders. They know that their sceptre is departed; and now they not only want us to nurse them, but they want us to put another sceptre into their hands, more potent then they have ever possessed, with which they can rule over us. For one, I demur. I will have nothing to do with or for slavery in the States, I will neither touch, nor taste, nor handle the unclean thing. I deny that it is a national institution. It is not a child of our begetting. It was born long before this government had an existence; nor have we adopted it into our family. On the contrary I deny that this government has any right, either to create a slave, or, by the exercise of its powers, to continue one in his bonds. I know that this is taking bold and high ground: but it reaches no higher than the constitution itself, and man's inalienable rights. Where, in that instrument, is any power conferred upon any department of this government to make a man a slave? Is it to be found among the express powers? Which one? Let gentlemen lay their finger upon it if they can. It is necessary to carry into effect any expressly granted power? Which one, I ask again? There is no such power there. None ever was intended to be granted. And even if there had been an attempted grant of any such power, such grant would be null and void. The powers of our national government are derived from the people themselves. The people could confer no power which they themselves did not possess. No man can empower another to do a thing which he himself had no right to do. The people had no right to make a slave, nor could they confer any such right upon a government of their own forming; and should they attempt it, the act would be a mere nullity -- no part of the constitution, nor binding upon any man, or any State. This is no new doctrine. It follows, inevitably, not only from the principles of eternal justice, from God's will revealed to man, but also from the principles of the declaration of American independence, solemnly proclaimed at the time of the nation's birth. Does not that say, that man has by nature an inalienable right to liberty -- that is, a right from which he cannot be separated? It was upon this rock that liberty took her stand during our revolutionary struggle, and cheered our troops, and nerved the arms of our mighty men, as they went forth to battle with England's armed host. And after the din of battle was over, and victory won, our fathers met together to build, upon this rock, a temple in which she might dwell forever. That temple is our sacred constitution. It is true, it has been greatly polluted since. In it, unclean beasts have been offered up in sacrifice. It has been made a house of merchandise, and a den of thieves. Liberty, for a time, seems to have left in disgust; but I thank Heaven that she is returning. Already we can see her shadow before her, and soon, those will be cast out, who buy and sell in the temple, and the tables of money changers will be overturned, and the seats of them that sell slaves. The constitution will be

purified from all connection with slavery. It will be restored to those holy uses, for which our fathers erected it, to remain, I trust, a temple in which liberty may dwell forever.

So far from the framers of the constitution conferring power upon any department of the government to make a man a slave, they were not satisfied with its being silent upon that subject, and therefore, out of abundant caution, in an amendment to that instrument, they have inserted a clause utterly forbidding the use of such power. That clause is in these words: "No person shall be deprived of life, liberty, or property, without due process of law." Here the same safeguard is thrown around liberty that protects the life and property of every citizen in this country; and let us not forget that it applies to all persons. No distinction is made on account of color or station. And what is this safeguard? It is, that neither life, nor liberty, nor property, shall be taken from any person till there has been a legal trial; for this is the meaning of due process of law. Process is a legal, technical term, and comprehends all those various steps pursued by our courts of justice in bringing and deciding cases before them for litigation. Liberty is to be taken away in the same manner that life and property are taken away. And how is this done? By simply passing a statute that such and such persons shall be executed, or that the property of such and such persons shall be taken with a foreign nation for the purchases of territory, or passing resolutions for that purpose through Congress, providing that a certain class of the inhabitants of the territory shall be hung up by the neck till they are dean, and without being tried by a jury, or that their property shall be taken away? Would not such a statute, or treaty, or resolutions, be pronounced unconstitutional and void -- a palpable pronounced violation of this clause of the constitution? And is not liberty placed here with life and property? And is it not as dear as either of the others? Is it to be sported with as a thing for naught? Again, I ask, what guaranty is thrown around life and property by this clause of the constitution? What is meant by due process of law as applied to them? It is not that they shall not be taken away unless forfeited by crime, and that the commission of the crime shall be decided by a trial had by law? -- and that that trial shall be by jury, according to the second section of the third article of the constitution, which says that "the trial of all crimes, except in cases of impeachment, shall be by jury?" Has not this always been the understanding of the constitution? Has life or property ever been taken away in any other manner? And should they be, would it not raise a rebellion at once? And I ask, once more, is not liberty as sacredly guarded as either life or property? Is it not classed with them? Would not a statute passed by Congress, which should provide for taking away life or property, unless for the commission of crime already ascertained by the verdict of a jury, be pronounced by our judicial tribunals to be unconstitutional, null, and void? And would they not pronounce the provisions of a treaty for the same object null and void also? And if such a statute, and such provision of a treaty, taking away life and property, would be declared null and void, ought they not to declare them equally unconstitutional and void when made to take away liberty in the same manner?

Gentlemen may say that these principles would set free all the slaves in the Territory of Florida. I admit that they would. They are held in bonds by virtue of the laws of this government. Those laws are unconstitutional and void; and, in my opinion, every slave there is as free as the air he breathes.

Again: It may be said that these principles would free the slaves in those States formed out of the Louisiana Territory purchased of France. This result, however, does not follow. The slaves in those States are not held in bondage by virtue of the laws of Congress. They are held thus by virtue of State laws. While the territory belonged to the United States, the slaves then there were continued such by United States laws; and then they were in fact free, and should have been declared so. But now the institution of slavery in those States has passed out of the jurisdiction of the United States, and is as much beyond the control of the United States government, as it would be if those States formed separate and independent nations; and if all the laws of the United States should be repealed, not a slave there would be any more free.

From this view of the constitution, it would seem that the following conclusions are inevitable:

First. That Congress has no power to admit foreign territories or foreign States into this Union for any purpose whatever.

Secondly. That Congress has no right to exercise powers no conferred upon it by the constitution; that all such powers are reserved to the people or to the States, and are to be used by them in amending that instrument, in the form pointed out by the constitution itself.

Thirdly. That slavery in the States is a State institution, placed beyond the power of the Congress, which has no power to extend or perpetuate it, or do it away.

Fourthly. That the government of the United States has no right to make a man a slave, or to continue him in his bonds; that the people, who formed the constitution, having no such right themselves, could not confer it upon the government; and so far from attempting to do it, they have expressly guarded against it by providing that no person shall be deprived of his liberty except by due process of law.

Fifthly. That any act or resolutions passed by Congress to admit a foreign State, or nation, or territory, into the United States, would be null and void, neither binding upon any department of the government, nor upon any State, nor upon the people of the United States.

Sixthly. That any provision in any treaty made by this government, or in any law passed by Congress...[unreadable line] to slavery, or continuing them in slavery, are, and must every be, utterly void and of no binding effect.

Under these circumstances, should Texas be annexed to this Union, and for the avowed purpose of extending and perpetuating slavery, what would be its effect upon our constitution and Union? There are some who contend that it would be of itself a dissolution of the Union, and the formation of a new one, and that any State would have a right to say whether it would form a part of the new Union or not: that it would, in fact, throw the States back upon their original sovereignty, and place them in the same condition they were in prior to the formation of our constitution. Believing, as I do, that any act of this government annexing Texas to us would be clearly and palpably unconstitutional and void, I do not see how it could have this effect. I do not see how a null and void act can have any effect. I appears to me that this constitution as it is, and the Union as it is, and Texas as it is, would still remain. Texas would be no more annexed than it is now. The act annexing it would be a dead letter, to which life could not be imparted. It would not be binding while it remained, and might at any time be repealed. We may declare, if we please, the stipulations contained in our law or resolutions, or treaties, or whatever other name we may give to this unconstitutional act, to be the fundamental law of union, binding forever upon us and our posterity, but they never will be regarded as such, or submitted to as such, by the people of this country. Let it not be said that this is the language of nullification. It is far from it. The doctrine of nullification is, that any State may declare any act of Congress to be unconstitutional, and resist its execution, notwithstanding the judicial tribunals of the country shall decide it to be the law of the land; tribunals which the States themselves have clothed with power to decide what is and what is not law. This doctrine I abhor. It would annihilate every act of Congress in its turn. It would make every man a judge in his own case. Few, indeed, are the measures of our general government which have not, at one time or another, been declared to be unconstitutional by some one State injuriously affected thereby. It appears to me that any act of this government, decided to be unconstitutional by the judicial tribunals, must be submitted to by the States and people while the decision remains unaltered. If the act be of such a nature that it cannot be brought before those tribunals for decision, I see no remedy but temporary submission, until, by appeals to the good sense and justice of the people, the act shall be repealed. It is true, we may submit to an unconstitutional act so long, making no efforts for its repeal or overthrow, until the interests of innocent men have become so interwoven with its existence, as in the case of the Louisiana purchase, that its repeal or overthrow would be unjust. But in this case there will go up one continued, determined, unceasing cry for repeal, till it is done. I do not say that the people would not submit to naked annexation; but they never will regard the terms of the annexation as fundamental law, especially any terms permitting slavery in any portion of the annexed territory. Gentlemen may think that there will be a little bluster on the part of anti-slavery men, and then all opposition will die away. But they are mistaken. Anti-slavery men will never by lulled to sleep by another Missouri compromise. Their hatred of slavery is an undying hatred. It has grown up under bitter persecution, violence, and mobs, and has been watered by the blood of many martyrs. They are differently situated from what they were in 1820. Then slavery existed in many States where it is now abolished. Then England and the nations of the earth were against them. But now the fallow ground of the free States is broken up, and the seed has been freely sown and taken deep root. Now they have the sympathies of the christian and civilized world cheering them on. Now they have the example of British West India emancipation showing that abolition is both practical and safe; thus taking away the last excuse from every slaveholder who does not love slavery for slavery's sake -- who does not roll it as a sweet morsel under his tongue. But this is not all. They have reaped the bitter fruits of the Missouri compromise. They have seen slavery, strengthened by it, ruling over them with a rod of iron -- yes, and felt it too. The free States have long been looking to a brighter day -- to the day when the political power of this

nation should be placed in their hands. The long looked-for day has come. "The sceptre," as has been said, "has departed from Judah." But now they are asked to bow their necks again to the yoke -- nay, to help fasten it upon them. They will never do it; they will never submit to it. They will make unceasing war upon any scheme of annexation, whether adopted by us or not, until it shall be among the things that were.

I warn southern gentlemen against adding fuel to the anti-slavery fire now burning in the hearts of many at the North. They know little of the strength of anti-slavery sentiment there. They look upon the sixty-five thousand votes cast by the liberty party, as embodying the whole of it; they are much mistaken; it is not even a tithe of the whole of it. There are more anti-slavery voters to day in the free States, than there are slave holders at the South. These do not all belong to the liberty party, but they are no less determined anti-slavery men. Now, they feel that this government has no right to abolish slavery in the States -- that it has no jurisdiction over it there. They are satisfied with the constitution as it is, if it is to be administered according to its true intent and meaning. They do not desire to change it even in those, clauses which confer undue political power upon the slave States, and which permit the master to pursue his fugitive slave and capture him in the free States, although, were they to form a new constitution, they would agree to no such provisions. They are willing to abide by the bond, but they will not enlarge its provisions, by construction or otherwise. They have never agreed to aid in the extension or perpetuation of slavery, and they will never do it; but, at the same time, they do not now desire to change the constitution; they know it is changeable, that it may be amended, and made what it should have been when adopted. Should Texas be annexed, no man can calculate the consequences. Already there is beginning to prevail, in the free States, a sentiment that there can be no stability in the measures of this government, operating favorably upon northern interests, while slavery exists; that the Union itself cannot be maintained, unless slavery be overthrown. And there are some liberty men who have already adopted the sentiment, advanced by some southern men upon this floor, that there exists in this government a self-preserving power above the constitution; and they say that this power may be exercised in abolishing slavery in the States, if necessary to sustain the Union and maintain our free institutions. If slavery shall now triumph; if the constitution shall be made to fall prostrate at his feet, and its powers perverted to extend and perpetuate that institution, one thing is certain, that the line dividing parties in this country will henceforth be, slavery or freedom. Then the little cloud, now no larger than a man's hand, will quickly overspread the heavens; then the South will find, not only that the sceptre has departed from Judah, and a law-giver from between his feet, but also that the Shiloh of the slave is come. The North is slow to anger, and plenteous in mercy; but if its "wrath shall be kindled up, slavery will find its consuming fire."

SPEECH OF MR. RIVES, OF VIRGINIA,

In Senate, February 15, 1815 -- On the resolution for the annexation of Texas.

The Senate having resumed the consideration of the joint resolution from the House for the annexation of Texas.

Mr. RIVES rose and addressed the Senate in opposition to the joint resolution for the admission of Texas into the Union. He commenced by observing that it was very well known to the Senate, and not unknown to the country, (so far as any humble opinion of his could be deemed of any importance,) that he was not opposed to the acquisition of Texas whenever it could be fairly and honorable accomplished, in accordance with the provisions of the constitution, and without gravely disturbing the harmony of existing relations between this government and other governments. So far from it, that he regarded that measure as combining many important national advantages, commending it to the consideration of the whole country -- of the North and the West more than the South.

In much of what had been so eloquently said by the honorable senator from Pennsylvania [Mr. McILVAIN] yesterday, in regard to the expediency of the annexation, he concurred. But a far higher question than that is now before us. Everything that might be deemed by us expedient is not, therefore, lawful and justifiable. What would it profit us should we gain Texas, if thereby we lost our regard for that sacred instrument which was the bond of our national union, the pledge and palladium of our liberty and

happiness? The mode in which Texas was to be acquired, in its aspect upon the principles of our political compact, was heretofore made important acquisitions of foreign territory, more than doubling the area of our original limits, but we had made the acquisition by means of the treaty-making power, and in this case of Texas, too, the treaty power had been called into action to achieve the measure of annexation; but the treaty not having received the constitutional sanction of two-thirds of this body, it was now at last discovered that all this reference tot he treaty making power was a mere useless ceremony; a work of supererogation; an idle, unmeaning formality; and that the object could be better accomplished by a joint resolution, to be passed by a mere majority of the two Houses of Congress. Under these circumstances, the question now put to the judgement and conscience of every senator was, whether this summary mode of proceeding was warranted by the constitution, and in conformity with that good faith which the people of the several States had pledged to each other when they adopted the constitution and promised to abide by it.

It was the proud distinction and the peculiar happiness of this country to possess a written constitution -- an instrument which not only limited the general mass of power delegated to the government, but which defined the particular powers to be exercised by each branch of that government. According to its provisions, each department had its own appropriate sphere of action; each of them checked and was in turn checked by others; and thus the whole together preserved the safeguard of the public liberty. The legislative department in other governments arrogated to itself supreme power, the *jura summi imperii*; but, thank God; such legislative supremacy was unknown in ours. The legislative as well as the other departments of government in our system, were, in the impressive language of Mr. Jefferson, "chained down" by the limitations of delegated authority. "An elective despotism," as he had so well said, "was not the government we fought for." In our system the powers were so balanced between the several bodies of magistracy that neither could transcend its own limits without being immediately checked by the others. This was the fundamental conception of American constitutional liberty, as understood by the enlightened founders of this republic, as it had been faithfully carried out in the constitution of the United States. In that instrument all the legislative powers of the government were specifically enumerated and vested in the two Houses of Congress; the executive power was defined and entrusted to the hands of the President: while the judicial authority was confided to the Supreme Court, and to such other subordinate courts as should be established from time to time by Congress. This organization embraced all the great internal interests of the country.

But there remained other interests to be provided for, which had respect to the relations of this country with foreign powers. So important was the power which controlled these, that Locke, in his celebrated treatise on government, had ranked it along with the legislative and executive, as a co-ordinate independent power, under the name of the federative power. All these interests, whether of peace or war, of alliances, of succors, of commerce, of territory, of boundaries, were regulated by treaty. It became, therefore, in laying the foundations of the government, a matter of primary importance to determine where this great power should be lodged. In all the modern governments of Europe, it was an appendage to the executive; but in ours it was different. Under the articles of the confederation, this power was reposed in Congress; but the consent of nine States was requisite to give effect to any treaty or alliance. When the convention met to frame the new constitution, it was an embarrassing as well as an important inquiry, where this power should be deposited. The first idea suggested was to place it in the Senate exclusively; then it was suggested that the President should be associated with the Senate; and when this was resolved on, then arose the question whether the President and a mere majority of the Senate should exercise the power, or whether more than a majority should be required. In this question great interests were involved. The northern States entertained great jealousy in regard to the interests of the fisheries, and feared lost in the future exigencies of the republic, these might come to be ceded by treaty; while the southern States were equally jealous respecting the navigation of the Mississippi and the question of their western boundaries, both which points were then in controversy with Spain. Both the North and South, therefore, united in demanding that more than a simple majority of the senate should be requisite for the ratification of a treaty, and the proportion of two-thirds was finally agreed on.

The new constitution having been adopted by the convention which framed it, it was presented to the people assembled in conventions in their several States for acceptance or rejection. When the draft of the new instrument came before the convention of Virginia, no feature in it attracted so earnest and so jealous a degree of attention as this power to form treaties. The thunder of Patrick Henry's eloquence was immediately

launched against it; because he thought its arrangement of the treaty-making power did not sufficiently secure to the South and the West their rights in reference to the navigation of the Mississippi and to their western boundaries. He compared the new constitution with the old articles of confederation in this respect, and endeavored to show that the States had enjoyed greater security under the latter than they would by the new arrangement. So great was the anxiety in the Virginia convention respecting the safety of western interests, that a most searching inquiry was instituted into the acts of the Continental Congress respecting a negotiation for the temporary surrender of our right of navigating the Mississippi; and members of the convention who had been delegates to testify what had been done in that matter. Nor was until after days of deliberation that Virginia finally consented to ratify the new constitution; but she accompanied her ratification with a proposition for its amendment, demanding higher security respecting the exercise of the treaty-making power. Her demand was, that in commercial treaties the assent of two-thirds of all the members of the Senate should be requisite, and that in treaties for territorial boundaries the assent of three-fourths of both Houses should be requisite. The noble and patriotic State of North Carolina concurred with Virginia in this amendment, but it was not acceded to by the other States, the requisite number of them having ratified it with the treaty clause as it now stood.

Soon after the new government went into operation, an important discussion arose in Congress as to the extent of this very power. He referred to the unfortunate difference of opinion between the House of Representatives and President Washington respecting the British treaty negotiated by Mr. Jay. The House called on the President for the instructions under which the treaty had been made, and Gen. Washington sent them an answer in which, with the highest authority which had ever accompanied any merely human words, he gave his testimony as to the true intent and meaning of this part of the constitution. His words were these:

"Having been a member of the general convention, and knowing the principles on which the constitution was formed, I have ever entertained but on opinion on this subject; and, from the first establishment of the government to this moment, my conduct has exemplified that opinion, that the power of making treaties is exclusively vested in the President by and with the advice and consent of the Senate, provided tow-thirds of the senators present concur; and that every treaty, so made and promulgated, thenceforward became the law of the land."

"It is a fact declared by the general convention, and universally understood, that the constitution of the United States was the result of a spirit of amity and mutual concession. And it is well known that, under this influence, the smaller States were admitted to equal representation in the Senate with the larger States; and this branch of the government was invested with great powers, for, on the equal participation of those powers, the sovereignty and political safety of the smaller States were deemed essentially to depend."

Mr. R. was happy to say that that patriotic and enlightened House of Representatives, including, as it did, such men as Madison, Nicholas, Livingston, and Gatlain, and going, as it did, to an extent hardly justified in regard to their right freely to pass or not to pass acts to redeem the public faith, when plighted by treaties, yet did disclaim, in the most positive manner, any agency in the making of treaties.

Mr. R. said he had brought forward these facts in order to show that no question had entered more deeply into the framework and vital compromises of the constitution than the arrangement of the treaty-making power -- a power now sought to be exercised, in open defiance of the constitution, by the two Houses of Congress. There were occasions when the sudden irruption of new and dangerous innovations drove us all to an examination of the fundamental doctrines of our system. Virginia had a maxim in her bill of rights which could never be too often repeated, that "no free government or the blessing of liberty can be preserved to any people by a firm adherence to justice, temperance, moderation, and virtue, and by a frequent recurrence to fundamental principles." If ever there had been an occasion which called for such a recurrence, and the exercise of these saving virtues, this was one.

Having seen where the constitution has deposited the power of making treaties, the next question which presented itself was this: What is a treaty? -- for on that question depended the rightful decision on the measure now proposed.

An attempt had been made to attach a technical and cabalistic meaning to the word, which, if adopted, went to exclude many international contracts. But was this so? We were in possession of what was justly deemed the highest authority on such questions. Vattel told us what was the naked fundamental conception of a treaty, defining it to be "a public compact between independent sovereign powers." That was

the whole matter: there was no mystery about it. He knew indeed that in the language of diplomacy, we had both treaties and articles of convention, but conventions were all treaties; if not, whence did the Senate derive its power to ratify conventions, so called? An agreement between two nations in reference to a specific object or to a single act to be performed, such as the payment of indemnities or the fixing of some unimportant boundary, was usually denominated a convention; still it was substance a treaty, for the term treaty was generic and comprehended the whole. A treaty, according to the highest authority, was simply an international compact.

It was important to know in what sense this term treaty was understood by the people when they were called on to ratify the treaty-making power, as laid down in the new constitution. An on this point it gave him great pleasure to turn the attention of the Senate to a brief passage of the Federalist, which not only furnished a definition of a treaty, but went to explain the whole nature, philosophy, and conception of the treaty-making power. Gentlemen would find the passage in No. 75 of the Federalist, page 822:

"The essence of the legislative is to enact laws; or, in other words, to prescribe rules for the regulation of the society; while the execution of the laws and the employment of the common strength, either for this purpose or for the common defence seem to comprise all the functions of the executive magistrate. The power of making treaties is plainly neither the one, nor the other. It relates neither to the execution of the subsisting laws, nor to the enaction of new ones and still less to an exertion of the common strength. Its objects are contracts with foreign powers, which have the force of law, but derive it from the obligations of good faith. They are not rules prescribed by the sovereign to the subject, but agreements between sovereign and a sovereign. The power in question, therefore, seems to form a distinct department, and to belong properly neither to the legislative nor to the executive."

Now, with the lights derived from this authoritative definition of treaties and the treaty-making power, Mr. R. turned to the joint resolution which had been received from the House of Representatives; and he would inquire whether it was not, to all intents and purposes, in every practical sense, a treaty, and nothing but a treaty? It was not a change of name or a variation in form which affected the substance of thing. He put it to gentlemen to say whether this joint resolution was not in substance a "contract with a foreign power?" Was it not a treaty, in the language of the Federalist, just as much as Mr. Tyler's treaty, which had been submitted tot he last session? What was a contract? His learned friend from Pennsylvania [Mr. B...] needed not to be reminded that a contract was an "agreement to do or not to do a particular thing on a sufficient consideration." Was not this an agreement, on certain terms and condition, to admit a foreign nation into this associated federal republic? The question answered itself. What had the honorable senator done yesterday? Had he not gone over the terms of this agreement, declaring that some of them he liked and others he did not like? In this resolution Congress was asked to say to Texas, "If you will unhorse your President; dissolve your government; go back to a state of nature; cede all your public establishments, mines, minerals, and every thing but your public lands; retain your public domain; continue responsible for your debts; agree so the understanding that new States may be carved out of your territory, on the condition that in all of them north of a certain line slavery shall be prohibited forever, and in those south of it it shall or shall not be prohibited, as the people may choose, -- if you will do all these things, then it is a bargain, and wee will admit you into our confederacy on equal terms with ourselves." Now, if this was not an agreement -- if it was not a contract, and that with an extraordinary display of terms too, then Mr. R. did not know what an agreement or a contract was. That it was an agreement all the world must see. No man could wink so hard as not to see it. The only question, then, which remained was, whether it was not an agreement with a foreign independent power?

What, then, was Texas? Need Mr. R., at this time of day, prove the title of Texas to national independence? Should be told that she was not a foreign, sovereign, independent power? He presumed not. Then, whether we looked at the terms or at the parties, this was an agreement between sovereign and sovereign.

Now, then where was such an agreement to be consummated according to the constitution? He asked the honorable senator from Pennsylvania where? The joint resolution announces its true character on its face. Res ipso linquitur. It is styled a joint resolution, "declaring the terms on which Congress will admit Texas into the Union as a State." When we looked at the body of the resolution, did it bear the ordinary badge of legislation -- "be it enacted?" No: its language was, "be it consented." [A laugh.] It was the language of the

marriage ceremony -- "whereas A and B have consented together in holy wedlock." [Increased laughter.] He was sorry to be obliged to make such an allusion when addressing the honorable gentleman, who was not yet initiated in these mysteries. [More laughter.] Yes, its terms were "be it consented," "it is hereby agreed," not "hereby enacted." It was the very language of treaties. Gentlemen could not wink so hard as not to see it was in substance a treaty, begun and ended by legislation.

And, further, when we looked at the subject matter of the agreement, Mr. R. averred not only that it was a treaty, but that the object could be consummated in no other way than by treaty.

Mr. R. laid down this proposition; and he invited the honorable senator (who, though not a "Philadelphia lawyer," was, at all events, a Pennsylvania lawyer) to find a flaw in it if he could. He asserted that foreign territory could not peaceably be acquired (upon terms and conditions, as in this case) in any other mode than by treaty; because such territory, being under an independent sovereign power, could not be peaceably acquired without the consent of that sovereign; and when that consent was given, in whatever form, it constituted a treaty, and nothing else.

He had heard, by way of embarrassing and mystifying the subject, a great deal said as to the various modes in which the territory could be acquired. They were told that it might be acquired by conquest and by discovery. So it could; but neither of these modes affected Mr. R.'s proposition in the least. He said it could not be peaceable acquired. This, in terms, excluded acquisition by conquest, and by implication it excluded discovery, because it referred to a case of a peopled and settled country, under the jurisdiction of a sovereign organized power. He again invited his honorable and learned friend to answer it if he could. Let him point out a mode by which foreign territory could be peaceably acquired. In the proper political sense of the rights of jurisdiction attaching to it, otherwise than by treaty.

Hence it was that, after the discussion of a quarter of a century, it had come to be the settle law of the land that the treaty power could acquire foreign territory, and that it exclusively was competent to that function.

Mr. R. went on to say that this question had come up for decision before the highest judicial tribunal of the country in the case of the American Insurance company vs. Center, referred to by the honorable senator from Kentucky, [Mr. Morehead,] when that august court had pronounced the opinion that the constitution, having established the treaty-making power without qualification or restriction, it had the same extent in our government which it had in all other governments, and legitimately extended to the acquisition of foreign territory. He was no lawyer, and felt as if he was going out of his sphere in quoting cases to his learned friend. He understood, however, that the honorable senator recognised the correctness of that decision in its fullest extent. He did not pretend to question that the treaty power might acquire foreign territory; but he made a distinction -- that when a foreign power alienated only a portion of its territory, and thereby dismembered itself, a treaty was necessary; but the case was different when such a government alienated the whole of its territory. Such was the distinction of the gentleman. But if there was anything in it, the gentleman was estopped from using such an argument, because the treaty submitted at the last session did propose to alienate the whole Texian territory, and the gentleman voted for it. By his own act, therefore, he had recognised the doctrine that the treaty power was the proper instrument of acquisition, even when the whole territory of a foreign government was by its own act to be alienated. Doubtless the gentleman had the cases of Louisiana and Florida in his mind. But even admitting the distinction taken, that did not affect the domestic question with us; it affected only the other party. The question is raised was not whether this government could acquire the territory of another government by treaty, but whether or not it was competent for a foreign government to alienate the whole of its territory without the express consent of the people. But there was a most obvious way to avoid that difficulty. This joint resolution provided for taking the sense of the people of Texas on the question in their own primary assemblies. And could not a treaty provide the same thing?

And here he would remind the honorable senator that Mr. Madison, in the instructions given by him at the time of the acquisition of Louisiana, suggested that the very thing -- that some mode should be provided of obtaining the consent of the inhabitants to the act of cession. It was according to the general principles of the law of nations. Vattel himself declared that in such cases the people were to be consulted. Now, what Mr. R. said was this: that, as the alienation of the whole was more important than the alienation of a part, so there was a greater necessity for observing all the constitutional guaranties furnished by the

treaty-making power in one case than in the other. The admission of Texas being the former case, it required the interposition of all the guaranties in the constitution respecting transactions with foreign nations, and must have the assent of two-thirds of the sovereign members of the confederacy.

Perhaps the honorable senator had the idea that, in a transaction like this, where a foreign government transferred its entire territory, with all its inhabitants, to the government of a new sovereign, where it transferred human allegiance as well as mere acres of the soil, it was not a treaty, and he feared an honorable friend in his eye [Mr. FOSTER] was a good deal taken by this doctrine. But was there any ground for it? A treaty was an agreement with a foreign sovereign; and where was the sovereignty in Texas? Certainly, according to the American doctrine, in the mass of the people. Now, if the agreement was made ultimately with the people, instead of being less, it was more emphatically a treaty with a sovereign power than if made with the government only. If the honorable senator from Pennsylvania really intended to intimate that a transaction by which an entire territory and people are transferred to a foreign sovereignty is not properly a treaty, (though he at least would seem to be estopped from such an argument by his vote for the treaty of the last session,) he would give the "law and the prophets." It was an authority from the weight of which that gentleman would not detract, and it went directly to show that precisely such a transaction as is now in view with the people of Texas is a treaty. Vattel (book 1, chap.16) speaks of two forms of treaty, in which one of the parties assume a subordinate relation to the other; the one a treaty of protection merely, and the other a treaty by which one power, on account of weakness, an intimate community of interest, or other cause, submits itself entirely to another. His language was this -- first as to a treaty of protection:

"When a nation is not capable of preserving itself from insult and oppression, she may procure the protection of a more powerful State. If she obtains this by only engaging to perform certain articles, as, to pay a tribute in return for the safety obtained, to furnish her protector with troops, and to embark in all his wars as a joint concern, but still reserving to herself the right of administering her own government at pleasure, it is a simple treaty of protection, that does not at all derogate from her sovereignty, and differs not from the ordinary treaties of alliance, otherwise than as it creates a difference in the dignity of the contracting parties."

Then follows a paragraph describing precisely the nature of the transaction now before us, by which one foreign State is proposed to be completely subjected to and incorporated into another and denominating it expressly a treaty. He begged leave to read it to the Senate:

"But this matter is sometimes carried still further; and, although a nation is under an obligation to preserve with the utmost care, the liberty and independence it inherits from nature, yet, when it has not sufficient strength of itself, and feels itself unable to resist its enemies, it may lawfully subject itself to a more powerful nation, on certain conditions agreed to by both parties; and the compact or treaty of submission will henceforward be the measure and the rule of the rights of each. For, since the people who enter into subjection resign a right which naturally belongs to them, and transfer it to another nation, they are perfectly at liberty to annex what conditions they please to this transfer; and the other party, by accepting their subjection on this feeling, engages observe religiously all the clauses of the treaty."

He knew that his honorable and learned friend from Massachusetts [Mr. CHOATE] had, during the last session thrown out the idea that this was not properly the subject of treaty, and had asserted that the records of history could not show an example of such a treaty. With all respect for the learning and sagacity of his honorable friend, he must nevertheless be permitted to say that on this point he thought him mistaken. Such instance must naturally have occurred in the mutations of an empire. His friend well knows the frequency with which the absorption of lesser States had occurred to the progress of the Roman Empire to universal dominion. He had not made this point a subject of recent inquiry; but he though he could not in saying that there had been many instances of the absorption and incorporation by treaty, by mistaken. It had also taken place in modern times. How had the vast monarchies of Europe grown up and extended themselves but by the annexation (in some cases undoubtedly by convention) of weaker territories around them? Let the honorable senator consult the classic pages of his own admirable Prescott, and I doubt not he will find there that the Spanish monarchy had been built up and established by the successive incorporations with Arragon and Castile of the kingdom to Ferdinand and Isabella for a smaller province, which also he afterwards surrendered, and finally retired into Africa. Let the gentleman look at the history of the low countries -- this great battle field of Europe -- and see how, with occasional periods of national

independence, they had been transferred from one sovereign to another. Was all this done without treaty? Or let him turn to a still more modern instance -- the connection between Norway and Sweden. Norway had been a dependency of Denmark; Denmark, by treaty, ceded her to Sweden, but Norway refused to be ceded; she set up her own banner, like Texas; adopted a new constitution, and asserted her independence; but at length, being closely pressed by Sweden, she entered into negotiations, and concluded a convention, by which she surrendered her sovereignty, both territory and people, to the Swedish crown. These certainly were cases in point. But Mr. R. did not rest on them; he rested on the impregnable authority of the well-known exposition of the law of nations with he had quoted -- an authority which was in the hands of every framer of the constitution. While, on the part of Texas, therefore, an appeal to the people might be necessary to sanction the transfer of their entire territory, and national independence, with us the constitution had provided a competent power to treat with them in the regular treaty-making branch of the government, and that power we were bound to pursue according to the imperative forms of the constitution.

Mr. R. said thus much in relation to the treaty-making power, because he considered it an indisputable preliminary to another question. If the general power of making conventional arrangements with foreign nations was delegated by the constitution to the President and two-thirds of the Senate, and, in the words of General Washington, exclusively vested in them, then he held that no other clause in the same instrument could be so interpreted as to nullify that grant. Would the senator from Pennsylvania tell him that, after this investiture of the treaty power in the executive and two-thirds of the States, as represented in this body, it was admissible to give such a construction to another clause of the constitution as wholly to overrule and subvert that power? Yet that was the scope and necessary effect of the argument. Under the power of Congress to admit new States into the Union, it was contended that a mere majority of the two Houses of Congress could enter into stipulations and agreements with foreign States for their incorporation into our political system, although the power treating with foreign States had been expressly restricted to the President and two-thirds of the States as represented in this body. Would it not be most extraordinary, indeed, that the wise and sagacious men who framed the constitution should have placed so strong a check on the most unimportant transactions of this government with foreign powers, such as the payment of a sum of money, the surrender of criminals, the fixing of some small and unimportant boundary line, by requiring the assent of two-thirds of the States, and yet should have abandoned to a simply majority of the two Houses the vast, formidable, transcendent power of treating with a foreign nation for its incorporation into our Union? The mere statement of the proposition was sufficient. It could not bear a moment's consideration. Was not such a power as capable of deranging the original adjustment of their relative interests among the States as an amendment of the constitution itself? And yet for the amendment of the constitution, the assent of three-fourths of the States was indispensably required. Was it to be presumed, in the face of this manifest intention of the framers of the constitution to reserve a veto on all transactions and agreements with foreign States in the hands of one-third of the sovereign members of the confederacy, that the vast power of admitting a foreign government, and people into the Union would be intrusted to the vote of a mere transient party majority of the two Houses of Congress? It cannot be supposed for a moment.

And in what part of the constitution was this vast, imperial power, capable of subverting all its well-adjusted balances, to be found? -- this lover of Archimedes, with which to prize up from its stable foundations the whole system of our constitutional government? Where, he asked, was it to be found? In the forefront of the constitution? In some phalanx of enumerated powers with the power to make war, the power to coin money, the power to raise armies, to build navies, to levy taxes? No, sir. At the very foot of the instrument, amid the odds and ends of miscellaneous provisions. It was relegated to an obscure corner; it was pushed off into a dark hiding-place, where it lay concealed like some Guy Fawkes, beneath the Senate House, prepared to blow up and involve in one common ruin the constitution and the Union of the country., Surely if this provision had the colossal magnitude which this honorable senator supposed, it would not have been thus sneaked off (to use the memorable expression of a former distinguished member of this body, now no more) into a corner.

The honorable senator had instructed us by reading certain general rules of interpretation laid down by Vattel; but Mr. R. should leave all that, and come a little nearer home. He would ask the gentleman's attention and that of the Senate to a very pertinent and practical rule of construction, applying to the constitution of the United States, laid down by one who had a deeper interest in our system -- not that Mr. R.

objected to the passage which the senator from Pennsylvania had read. The rules were good in themselves, but they were inapplicable to the question. He would show that the language of the constitution, in the clause now under discussion, admitted of but one rational interpretation, and that is precise coincidence with the literal import of the words, as they were universally understood and received at the time of the establishment of the constitution. he had before him a canon of constitutional interpretation which he well knew the senator from Pennsylvania must respect, for it came from an authority before which all true democrats would reverentially bow. It was to be found in a letter from Mr. Jefferson to Judge Johnson, in which that distinguished founder of the democratic school recapitulated the fundamental principles of his creed. "On every question of construction," he says, "we should carry ourselves back to the time when the constitution was adopted, recollect the spirit manifested in the debates, and, instead of trying what meaning may be squeezed out of the text, or invented against it, conform to the probable one in which it was passed."

Here was a good republican rule of construction; and it was a rule which had been sanctioned by the highest judicial tribunal of the country, in one of the greatest causes ever brought up for the decision of any court on earth. I was the case of a citizen in Maryland against the Commonwealth of Pennsylvania, in reference to the recovery of fugitive slaves. In that case the most delicate and critical relations of the States of this Union were involved, and in delivering the opinion of the court, recognizing and affirm....