New-York Daily Tribune

WHO SHOULD RULE THE TERRITORIES?

Popular Sovereignty and State Rights.

THE DOCTRINE OF TRUE DEMOCRACY.

Speech of the Hon. J. A. Bingham,

OF OHIO,

In the House of Representatives, January 13, 1857.

The President's Annual Message being under consideration, on a motion to refer and print,

Mr. BINGHAM said:

Mr. SPEAKER: The President's Message, now under consideration, abounds in sentiments subversive of the Constitution, and sanctions and defends a policy destructive of the public peace, and injurious to the public interests. And yet the President complains of agitation. His friend and advocate, the gentleman from Georgia, [Mr. Stephens], repeats this complaint, and cries, "Agitation!" "Agitation!" There has been agitation, general and universal, among the people. It still continues, and not without cause. The President, in my judgment, has *abused* the high trusts committed to him; hence the *agitation*, and that "cry of alarm" among the people of which he complains. It is right, Sir, that the people raise the "cry of alarm;" it is right that they *agitate* for the correction of abuses committed by their agents and representatives. I believe, with Burke, "where there is *abuse*, there ought to be *clamor*; "because it is better to have our slumbers broken by "the fire-bell than to perish amid the flames."

The President in this message, under cover of a cunning device of words, advances the monstrous proposition that the several States of this Union, *as States*, have a *constitutional* and *imprescriptible right* to traffic in slaves, not only within their respective limits, but throughout the National Territories. Having inaugurated this policy in Kansas, by which that ill-fated Territory has been subjected to an absolute tyranny; by which its soil has been cursed with the manacled foot of the bondman, and stained with the blood of *murder and assassination*; the President, with an audacity unparalleled, deprecates *agitation*, and demands acquiescence in this policy as the test of fidelity to the Constitution and the Union. To enforce this acquiescence as a duty, the President undertakes a defense of the repeal of what he terms "the statute restriction upon the institution of new States," and an exposition of the principles of the Constitution and of the *rights* of the States under it. Of the repeal of the "statute restriction" by the Kansas-Nebraska act of 1854, he says:

"Congress legislated upon the subject in such terms as were most consonant with the principle of popular sovereignty which underlies our Government. It could not have legislated otherwise without doing violence to another great principle of our institutions, *the imprescriptible right of equality of the several States.*"

This "statute restriction upon the institution of new States," which was repealed, the President tells us was violative of the imprescriptible right of equality of *the several States*. It is not the right of the *new States* that this statute restriction invaded, for they were not in being, but the *imprescriptible right of equality of the several States.*

What was this statute restriction, the repeal of which the President thus attempts to defend, and why was it originally enacted? It was the restriction imposed upon the Extension of Slavery by the eighth section of the act of 1820, commonly called the Missouri Compromise; and which forever excluded Slavery (otherwise than in punishment of crime) from all that part of the Louisiana Territory lying west of the western boundary of the State of Missouri, and north of 36 deg. 30 min. north latitude. This prohibition was in its terms perpetual. The motives which prompted its enactment are apparent. The Congress which enacted it doubtless felt and knew that Slavery was subversive of the ends of all free government, a violation of justice and of the rights of the enslaved, and contrary to the spirit of our free Constitution; they also knew that in the wrong in which this institution has its inception there was no law to restrain the enslavement of all classes and races of men; that the brute force by which the inherent rights of the black race had for centuries been cloven down was not likely to be restrained from inflicting like cruelties and oppressions upon the white race—that the violence in which this system lives and has its being is deaf alike to the voice of justice and the cry of the oppressed, whether that cry bursts from the crushed heart of an African or an American. Hence the origin of that enactment. It was humane, politic, and just.

But, Sir, it was repealed, we are told, in order to maintain inviolate "the imprescriptible right of equality of the several States." An imprescriptible right of equality in what? In the bones and sinews and souls of men! And this right, the President tells us, is imprescriptible—not to be forfeited by non-user, nor to be restrained by Congressional enactment, and coextensive with the national Territories. The President further tells us that this right "is a great principle of "our institutions—a *constitutional* right of each and "all of the States of the Union, as States, which the "people, by their recent election, have sanctioned and "announced."

If all this be true, what a mockery for the President to tell us, as he does tell us in the very next line of his message, that the people have *thus* "proclaimed their "unalterable and devoted attachment to the Constitu-"tion, as the safeguard of the *rights of all*, and as the "spirit of the *liberty* of the Republic." The spirit of the liberty of the Republic! to enslave *men* throughout the national jurisdiction! to cast a fetter upon the human soul! to interpose the dark shadow of oppression between man and his Maker! Sir, this is not the spirit of that liberty which God gave to man when He breathed into him the breath of life. This is not the spirit of that liberty, one hour of which "is worth a whole eternity of bondage." This is not the spirit of that liberty for which Hampden and Sidney died, and for defending which Milton was hunted and persecuted in his blindness. This is not the spirit of that liberty for which the great apostles of our race—men of whom the world was not worthy—suffered hunger and thirst, cold and nakedness, and endured, without fear and without reproach, the jeers of hate, the scowl of power, the gloom of the dungeon, the torture of the wheel, the agony of the faggot, the ignominy of the scaffold and the cross.

I shall not stop to inquire whether the President has or has not uttered a flagitious libel upon the American people by his announcement, that they have sanctioned this alleged right to enslave man as the "constitutional "right of each and all of the States, as States, as the "spirit of the liberty of the Republic." They will answer to that charge themselves, and with more potency than any man can answer for them.

Is it true, that this alleged imprescriptible right of the several States is a great principle of our institutions, sanctioned by the Constitution, and upheld by the national arm? If this be true, it affords the reason of the President's assertion in his message of last year, that the attempt by congressional enactment to prohibit Slavery in the Territories recently acquired from Mexico, was "the endeavor to force the ideas of inter-"nal policy entertained in particular States, upon allied "independent States."

With these instructions of the President upon the "theory of our Government," we can understand why it is that the Southern States deny the right of Congress to exclude Slavery from the Territories; while distinguished representatives of the South demand of Congress the repeal of all restrictions upon the traffic in slaves throughout the national jurisdiction, whether upon the land or the sea. To be sure, the Constitution provides that Congress shall have power to regulate commerce; and the power to regulate implies the power to prohibit; but the Constitution also provides that "Congress shall have the power to make "all needful rules and regulations respecting the terri-"tory of the United States." The power of Congress to legislate in respect of each of these subjects—commerce and the Territories—is the same, *general* and *exclusive*. The word *needful* expressed in the one grant of power, is *implied* in the other. Only that legislation which is *needful* is contemplated by the Constitution in either or any case; only that legislation which is *needful* should be tolerated by the people.

If the President be correct, it follows that these powers in Congress are but trust powers, to be so exercised as not to infringe but maintain this alleged imprescriptible right of each and all of the States as States. This was the opinion of Mr. Calhoun, from whom manifestly the President has taken his political faith. That illustrious Senator (Mr. Calhoun) said: "It was they (the "several States) who constituted the Government as "their representative or *trustee*, and intrusted it with "powers to be exercised for their benefit" (Calhoun's Works, vol. 4, p. 497). If it be true, then, that the States as States have each this *imprescriptible* right to traffic in slaves, not only *within* but also *without* their respective limits, and that the National Government is but their trustee to enforce it, in my judgment, South Carolina has the same constitutional right to demand the repeal of your statute which prohibits the slave trade upon the seas and punishes it with death as Virginia had to demand the repeal of your statute of 1820, which prohibited the slave traffic in the Territories. Both these enactments rest for their validity upon the same general power in Congress; and the extra-territorial right of the several States to traffic in slaves, if it exist, is as sacred upon the seas as upon the land. It logically results, therefore, upon the President's showing, that the statute restriction upon the slave trade upon the seas is violative of a great principle of our institutions, the imprescriptible right of equality of the several States.

How comes it that the President does not at once denounce this unequal exercise of the trust power of the Government over the foreign commerce of the States, as "an endeavor to force the ideas of *commer-"cial* policy entertained in particular States upon allied "independent States?" One would infer from this language of the President, that we had no Constitutional Government; that we still lived under the Confederation; that the commerce of this great country upon the land and the sea was not under the exclusive control of a National Government, but was subject to the sovereignty and conflicting regulations of thirty-one allied Independent States.

I scout all such dogmas. I rejoice to-day in the assurance that, despite the President's *false* statements and *false* logic, we have a National Government fully empowered by the Constitution to regulate *exclusively* the commerce of the country with all foreign States, between the several States of the Union, and throughout the National Territories. Every American citizen knows that the commercial embarrassments of the country, after the establishment of independence, arising out of the conflicting commercial regulations of the States under the Confederation, contributed more than any other cause to the formation of the Constitution.

Who will forget the noble action of Virginia in 1786? Virginia, the mother of dead heroes, and dead patriots, and dead statesmen, but, thank God! the mother also of a living Republic and a living Constitution. When Virginia, in 1786, appointed her commissioners, instructing them to meet such commissioners as the other States of the Union should appoint "to take into con-"sideration the *trade* and *commerce* of the United "States," she took the first great step toward the formation of that more perfect Union, and free-written Constitution, under which we live. Sir, that Constitution was ordained and established by the people of the United States, to establish justice; to provide for the common defense; to promote the *general* welfare; to insure domestic tranquillity; to protect industry; to regulate commerce, and to secure the blessings of liberty, and not to form a mere *alliance* of "independent States," with an equality of right as States, *to enslave men* within and without their respective jurisdictions.

But, says the President, the States are equal, and have each and all, as States, equality of rights. The several States are equal in respect of all the great and essential rights of a free Commonwealth, in respect of all rights sanctioned by the Constitution and consonant with its spirit; they each and all, under the Constitution, have the right to do whatever a "*Free State may of right do*," except that they may not exercise any of the powers granted by the Constitution exclusively to the General Government. But I have yet to learn that any State formed under and by virtue of the Constitution may of *right* enslave its own children, and sell them like cattle in the shambles! The Constitution does not provide for the erection and admission into the Union of such States, nor does it admit the existence of such a tyranny within the Territories, whereits jurisdiction is exclusive. The States, I say, are equal under the Constitution, in the right, within their respective limits, to establish justice, to promote the general welfare, and to secure to each and every person therein, the absolute enjoyment of the rights of human nature, which are as imperishable as the human soul, and as universal as the human race. But the States are unequal in the right to do wrong, if I may be allowed the paradox—in the privilige to trample upon the inborn rights of humanity, and to violate that principle of eternal justice which requires that every man shall receive his due. The original States, not under the Constitution, nor "by force of the Constitution," but independent of it, retained to themselves a monopoly in the horrid crime of Slavery, within their respective limits, and also in the slave traffic for twenty years upon the high seas.

This reservation of privileges by the original States—this inequality between them and the new States formed *under* and *only* by force of the Constitution—is written upon the face of that instrument, and declared by the National Legislation in the erection and admission of new States. The constitutional provision for a three-fifth representation, based upon slave population, and also the provision for the recapture of slaves escaping from one State into another, *implied* an exclusion of the General Government from an interference for the abolition of Slavery within the *original* States. These two provisions are, in fact, implied limitations upon the power of the General Government, for the *exclusive* benefit of the original States. So, also, the ninth section of the first article of the Constitution was an express limitation of the general power of Congress over the foreign commerce in slaves, for the *exclusive* benefit of the *then* existing States. That section is in these words:

"The migration or *importation* of such *persons* as any of the States NOW EXISTING shall think proper to admit, shall not be *prohibited* by CONGRESS, prior to the year 1808, but a *tax* or duty may be imposed on such *importation*, not exceeding $10 for each person."

This express limitation in favor of the *original* States was absolutely necessary if they would continue the foreign slave trade after the adoption of the Constitution for the reason that the Constitution was declared "to be the supreme law of the land, the Consti-"tution and laws of *any* State to the contrary notwith-"standing," and by its terms the exclusive power was granted to Congress to regulate foreign commerce even to prohibition, which included navigation and intercourse as well as trade, the importation or commerce in slaves, as well as the importation or commerce in goods. That all of these limitations upon the power of the General Government, whether implied or expressed, were for the *exclusive* benefits of the States then existing, cannot be gainsayed, and therefore the power of Congress was not thereby restrained in legislating for the government of the Territories, or for the institution and admission into the Union of new States.

The attempt was made in the constitutional Convention to secure to the *new States* which might be hereafter admitted into the Union the same privileges thus retained by the original States; but it failed. On the 29th of August, 1787, a proposition was made in that Convention to provide by the Constitution for the admission of new States "on the same terms with the original States." (5 Elliot's Debates, p. 493.) This proposition was rejected, and the provision adopted and inserted in the Constitution as it now stands, that "new States *may* be admitted by the Congress into this Union." Why were the words "upon the *same* "*terms* with the original States" rejected by the Convention, and excluded from the Constitution? Manifestly, to declare plainly and distinctly the intention of the framers of the Constitution, that new States should not come into the Union of *right*, and upon the *same terms* with the original States; but only by the consent of Congress, upon such terms, and under such restrictions as would subject them to the spirit of the Constitution, not only as it was originally framed and adopted, but also as it might be thereafter amended.

This construction, Sir, of the Constitution that Congress, in the organization and admission of new States might impose conditions upon them to which the original States were not subjected, by requiring them to conform their domestic institutions to the Constitution in all respects, has been affirmed and sanctioned by the legislative, executive and judicial departments of our Government from the day of its organization.

Let it be borne in mind, Sir, that on the 29th day of August, 1787, when the Constitutional Convention had the report of its Committee providing for the admission of new States under consideration and rejected the provision for their admission "on the same terms with the original States," the ordinance passed on the 13th of July, 1787, by the Congress of the Confederation for the government of the North-West Territory was in full force; that it was the law of *all* the national territory, and provided for the erection of *new States* therein, and for their admission into the Union of the Confederation "on an equal footing with the original States in all respects whatever," but subject, nevertheless, to certain terms, conditions and restrictions, which were not imposed upon the original States. These terms, conditions and restrictions, were, that Slavery, otherwise than in punishment of crime upon due conviction, should be *forever* prohibited within said *new States*; that *no man* should be *therein* deprived of his liberty or property, but by the judgment of his peers, or the law of the land; that *the inhabitants* thereof (all the inhabitants) should be *always* entitled to the benefits of the writ of *habeas corpus*, and of the trial by jury; that private property should not be taken even for public use without full compensation therefor; and that the Constitutions and Governments of such *new States* should be Republican, and in conformity to the principles of the ordinance. These were provisions of the six articles of the ordinance which were declared to be *unalterable* but by the common consent, not of the *new States merely*, but of *all* the States. Upon the adoption of the Constitution, the ordinance was superseded and ceased to be law, for the reason that the Government to which it owed its origin and validity had ceased to be. I have the authority of the President himself for that. He says in his last annual message, page 20:

"The ordinance for the Government of the territory north-west of the river Ohio had contained a provision which prohibited the use of servile labor therein." * * * "Subsequent to the adoption of the Constitution, this provision ceased to remain as law, *for its operation, as such, was absolutely superseded by the Constitution.*"

But, Sir, I rely not merely upon the President's assertion for the authority for saying that this ordinance ceased to be law upon the adoption of the Constitution. The Supreme Court of the United States has so ruled and declared in the case of Strader et al. vs. Graham. (10 Howard, p. 82.) In that case Chief Justice Taney says:

"It has been settled by judicial decision in this Court that this ordinance [of 1787] is not in force. As we have already said, *it ceased to be law upon the adoption of the Constitution.*"

It is significant that the Court in this case further decided that

"Most of the material provisions and principles of the six articles [of the Ordinance of 1787], not inconsistent with the Constitution of the United States [ever since the 7th day of August, 1789], have been established law within that Territory. But these provisions owed their legal validity and force *after* the Constitution was adopted, and while the Territorial Government continued, to the act of Congress of 7th August, 1789, which adopted and continued the Ordinance of 1787 and carried its provisions into execution, with some modifications, which were necessary to adapt its form of government to the new Constitution. And in the States since formed in the Territories, these provisions, so far as they have been preserved, owe their validity and authority to the *Constitution of the United States*, and the Constitutions and laws of the respective States [therein established], and not to the authority of the ordinance of the old Confederation."

What were the "most material provisions and principles of these six articles" of the ordinance? They are those which I have already enumerated. Not one of those principles and provisions enumerated are *inconsistent* with the Constitution; on the contrary, they were each and all incorporated in the Constitution, not as the Constitution was originally adopted, but as it was thereafter amended by the action of the first Congress in 1789, and the subsequent action of the people of the several States. The Constitution, as originally adopted, provided for the government of the territory of the United States by Congressional enactments, and for the admission of new States into the Union; but it did not, like the articles of the ordinance, declare that *no man* should be deprived of liberty or property but by the judgment of his peers and the law of the lands; that the inhabitants—all the inhabitants—should be entitled, in all cases involving liberty or life, to the trial by jury, and that private property should not be taken, even for public use, without full compensation therefor. To the honor of the first Congress under the Constitution—the Congress of 1789—be it said, that the first ten articles of amendment to the Constitution were reported to the several States for adoption, and were by the people of the States ratified and incorporated in the Constitution.

The fifth and sixth of these amendments contain *substantially*, and almost *literally*, the provisions of the articles of the ordinance, and, like them, declare that "*no person* shall be deprived of life, liberty, or prop-"erty, without due process of law;" that the people shall have the trial by jury in all cases involving life or liberty; and that private property shall not be taken for public use without just compensation.

The articles of the ordinance had been adopted by the first Congress under the Constitution; and as the Constitution was to be the supreme law of the land, it was but just that the First Congress should have those great principles incorporated, by the consent of the whole people of the Union, in the Constitution. That was done. Why did the First Congress adopt these provisions and principles of the ordinance, and procure their incorporation into the Constitution? That can be most fitly answered in the words of the ordinance itself:

"For extending the fundamental principles of civil and religious liberty," * * "and to fix and establish those principles as the basis of all laws, constitutions and governments which, forever hereafter, shall be formed within *the Territories*."

The act of 1789 adopting this ordinance, as also the amendment incorporating its great principles in the Constitution, were "statute *restrictions* upon the insti-"tution of new States" of perpetual obligation; and if those restrictions violated the alleged "imprescriptible "right of equality of the several States," the first Congress and Washington and the people of the United States were guilty of that violation. Perchance *they* had not learned that the several States as States, had an imprescriptible right to enslave men throughout the national territory, or that *new States*, under the Constitution, might assert any such right.

That Congress had the power to exclude Slavery from the Territories, and thereby impose statute restrictions upon new States, is clearly implied in the deed of cession made by North Carolina and accepted by the Congress of 1790, of the territory out of which Tennessee has since become a State. That deed of cession contains these words:

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

Why this proviso, if Congress had no power by statute regulations to exclude Slavery from the Territories, and even to emancipate slaves therein?

The act of 1798, for the government of the Mississippi Territory, contained one of those statute restrictions which we are told violate the imprescriptible right of equality of the several States, in these words:

"It shall not be lawful for any person or persons to *import* or bring into the said Mississippi Territory, from any port or place without the limits of the United States, any slave or slaves." * * * "And that every slave so imported or brought shall thereupon be entitled to receive his or her freedom." (1 United States Statutes, p. 549.)

The act of 1804, for the government of the Territory of Orleans, in addition to the same restriction imposed upon the Mississippi Territory, contains another restriction upon the several States and the people, in these words:

"No slave or slaves shall, directly or indirectly, be introduced into said Territory, except by a citizen of the United States *removing* into said Territory for *actual* settlement, and being, at the time of such *removal*, *bona fide* owner of such slave or slaves." (2 United States Statutes, p. 286, sec. 10.)

In 1798 and 1804 the original States were engaged in the foreign slave traffic. The limitation of the ninth section of the first article of the Constitution had not expired, and Congress was thereby restrained from prohibiting the importation of slaves, and the retention of them as slaves within the original States; but Congress did, nevertheless, claim and exercise the power by these two enactments to exclude this *foreign* traffic in slaves from the Territories of Mississippi and Orleans; and from the latter the domestic slave trade also.

That the power thus exercised by Congress over the Territories is constitutional, and unrestrained either by popular sovereignty or State sovereignty, has been solemnly adjudged by the Supreme Court; yet we are asked, with mock gravity, "Will you abide by the de-"cision of the Supreme Court, if it *shall* hereafter "decide that Congress has not the power thus to legis-"late?" To those who put this question, I reply, why did you not abide the decision of that tribunal, made in the purer and better days of the Republic, when Marshall's splendid and brilliant intellect, full-orbed, illumed its decisions?

The great question before the Court, in the case to which I refer, was the power of Congress to legislate over the Territories and the extent of that power. This will become manifest by the statement of the case as set forth in the opinion of the Court.

The plaintiffs brought their action to recover certain goods which had been sold pursuant to a decree of a Territorial Court of Florida. The *competency* of this Territorial Court to make the decree was denied. This Court had been established pursuant to the act of Congress of 1823, which authorized its erection, and which also conferred and defined its jurisdiction. The *validity* of this Congressional act was denied, and upon its validity the whole case depended. The Court, in the opinion pronounced by Marshall, C. J., says:

"The course which the argument has taken will require that in deciding this question, the Court shall take into view the relation in which Florida stands to the United States."

After reciting the treaty of purchase, the Court proceeds to say that the people of the Florida Territory "do not participate in political power; they do not "share in the Government till Florida shall become a "State. In the mean time Florida continues to be a "Territory of the United States, *governed* by virtue of "that clause in the Constitution which empowers Con-"gress 'to make all needful rules and regulations re-"specting the territory or other property belonging to "the United States.'" The Court adds, that "the "right to govern may be the inevitable consequence "of the right to acquire territory. Whichever may be "the source whence the power is derived, *the possession* "*of it is unquestioned.*"

The Court finally decides the very point made, as to the *competency* of the Territorial Courts, in these words:

"They are legislative courts, created in virtue of the *general* right of sovereignty which exists in the Government, or in virtue of that clause which enables Congress to make all needful rules and regulations respecting the territory belonging to the United States." "In legislating for them [the Territories] Congress exercises the combined powers of the General and of a State Government."

The competency of the Territorial Court was therefore sustained, and the rule made pursuant to its decree held valid. It is a little amusing to hear partisans say that this is mere *dictum*, so far as it affirms the power of Congress over the Territories, or that other evasion, that the Court only decides that "Congress when pro-"viding territorial courts employs the combined power "of a General and State Government," because of the *unlimited and exclusive jurisdiction of the United States in admiralty*. The plain words of Chief Justice Marshall leave no room for this evasion, and exclude any such conclusion. He says:

"These courts [the territorial courts] are *not constitutional* courts, in which the *judicial power* conferred by the Constitution can be deposited. They are incapable of receiving it."

He decides that "they are *legislative* courts, created in virtue of the *general right of sovereignty*" in Congress to govern the Territories. Whatever special pleading may be set up to evade the force of this decision, one thing is clear, that in the judgment of the Supreme Court the people of the Territories, during the territorial organization, "do not share in the govern-"ment, that the *exclusive* right to govern them is in "Congress, and that Congress, in legislating for them, "for all purposes, exercises the combined power of the "General and of a State Government." (American Insurance Company et al. vs. Canter, 7 Curtis, p. 687.)

Is not the combined power of the "General and of "a State Government" competent to exclude Slavery from and emancipate slaves within a Territory? North Carolina and the Congress of 1790 were of that opinion; hence the limitation on the power of Congress in the deed of cession to which I have referred.

Beyond all question the sovereignty over the Territories is vested in Congress; every act for their government from the act of 1789 to the act of 1854 proves this: Legislation is sovereignty.

I have already shown that the Constitution provides for the admission of *new States*, and that the provision was purposely so framed as not to compel their admission upon the *same terms* with the original States, but to enable Congress to subject them to other terms and conditions, and to admit or reject them at pleasure. Congress has repeatedly exercised this power, and in such a way as to put an extinguisher upon the asserted "imprescriptible right of equality of the several States."

The act to enable the people of Ohio to form a Constitution, and for their admission into the Union, passed April 30, 1802, and approved by Jefferson, provides that the people may form a Constitution and State Government, "provided the same shall be Republican, "and NOT REPUGNANT to the ordinance of July 13, "1787." (United States Statutes, vol. 2, p. 174, sec. 5.) Whence did the Congress of 1802 derive the power to impose this restriction upon the people of Ohio as a condition precedent to their organization into a State and their admission into the Union? Not from the ordinance of 1787; for that was superseded by the Constitution, and ceased to be law or the source of authority upon the adoption of the Constitution. The power was, and could be, derived only from the Constitution to impose this restriction. What was the effect of this restriction? Manifestly, to impose upon Ohio as a State, terms, conditions, and restrictions, to which the States were not subjected.

Those terms, conditions, and restrictions were, that by her Constitution and Government, Ohio should forever exclude Slavery from her Territory, except as punishment for crime on due conviction; that *no man* should, within her limits, be deprived of life, liberty, or property, but by the judgment of his peers and the law of the land, and that private property should not be taken for public use without just compensation, and that *all the inhabitants* should always enjoy the benefits of *habeas corpus* and the trial by jury. If Ohio had tolerated involuntary Slavery by her Constitution, or had denied to any man protection of life liberty, or property or trial by jury, her Constitution would have been *repugnant* to the ordinance, contrary to the enabling act of 1802, violative of the fifth and sixth amendments of the Constitution of the United States, and she could not have become a State or have been admitted into the Union. Her people so understood it, and framed their Constitution accordingly. What was the result of this? That Ohio was admitted by act of Congress into the Union, not "upon the same terms with the original States," but upon the express condition that as a State she should not engage in the foreign or domestic slave traffic, and, as a necessary consequence, that she should not, like the original States, have or be entitled to a slave representation on this floor. Call you this equality of right? Why was Ohio in the Union five years prohibited by force of Congressional enactment from engaging in the foreign slave trade, which all that time was being carried on by the original States? The ninth section of the first article of the Constitution did not *oblige* Congress to deny to Ohio this privilege; it only *restrained* Congress from *prohibiting* this traffic in the original States. Why was Ohio *prohibited* from *importing* slaves into her territory from abroad, or engaging in the domestic slave traffic; and why were all the States of the Union, and the citizens thereof, denied, by force of this Congressional "statute restriction upon the institution" of that new State, the alleged imprescriptible right to traffic in slaves therein? Most certainly because no such right is derived from, or sanctioned by, the Constitution; and because new States can only be formed and admitted upon such terms as will require of them a full and clear recognition of the Constitutional provision, that *no person* shall be enslaved or deprived of his property or life, but as punishment for crime upon due conviction.

By the act of April 19, 1816 (approved by Madison), to enable the people of Indiana to form a State constitution, and for their admission into the Union the same *terms*, *conditions* and *restrictions* which were imposed upon the people of Ohio, were imposed upon that State. (United States Statutes, vol. 3, p. 288, sec. 4.) By the act of April 18, 1818 (approved by Monroe), providing for the formation of a constitution and the admission of the State of Illinois, the same terms, conditions and restrictions were imposed upon the people of that State. (United States Statutes, vol. 3, p. 430, sec. 4.) The act organizing the original Territory of Wisconsin, including what is now the States of Iowa and Wisconsin, approved by Jackson, and passed April 20, 1836, provides that "*the inhabitants* shall be entitled to and enjoy" all the rights *secured* to the people of the North-West Territory "by the articles of "compact contained in the ordinance passed July 13, "1787, and shall be subject to *all the conditions and* "*restrictions and prohibitions* in said articles of com-"pact imposed upon the people of said Territory." (United States Statutes, vol. 9, p. 15, sec. 12.) The act "to establish the Territorial Government of Ore-"gon," passed Aug. 14, 1848, secures the same rights to, and imposes the same *conditions, restrictions and prohibitions* upon the *inhabitants* and future States of that Territory (United States Statutes, vol. 9, p. 329, sec. 14), with the sanction of President Polk, and with the advice and consent of the great godfather of popular sovereignty himself.

By the joint resolution for annexing Texas to the United States, the same conditions and restrictions, by the approval of Tyler and the vote of the reputed author of the Kansas-Nebraska act, are imposed on the future States to be organized within that Territory north of 36 deg. 30 min. north latitude (United States Statutes, vol. 5, p. 798). The mere fact that Congress did not, in all instances of the erection and admission of new States exercise this power of restriction and prohibition, argues nothing against the existence of the power. The mere non-user of a legislative power, in some instances, works no forfeiture of it. There is a record, a very strong record, of restrictions imposed by Congress upon the people of the Territories, and upon the institution of new States. If these restrictions be violative of popular sovereignty and State equality, Washington, Adams, Jefferson, Madison, Monroe, Jackson, Tyler and Polk are guilty of that violation, and were black—very black—Republicans. If these statute restrictions were constitutional, what becomes of this vaunted imprescriptible right of equality of the several States? If the General Government does not possess this power over the institution of new States—if its power is restrained by popular sovereignty and State sovereignty, as the President avers—then we are but the instrument to enforce whatever domestic system of government these high powers may establish in the Territories, even though it be a despotism which would make Nero blush, and put Caligula to shame.

Can it be that the Constitution of the United States is this weak and wicked invention? All your territorial legislation disproves it. Every organic act extends the Constitution and laws of the United States over the Territories. Your Kansas-Nebraska act does this. The Constitution, being in force in the Territories, is the supreme law. Whatever legislation, therefore, of the Territorial Government conflicts with the Constitution or the national statutes, is void, and subject to repeal by Congress. The Compromise acts of 1850, of which we hear so much of late, and on which the gentleman from Georgia (Mr. Stephens) takes his stand, in terms recognizes the power of Congress to prevent the taking effect of such acts, by a simple disapproval of them.

The President recognizes the force of the Constitution to restrain the exercise of Popular Sovereignty in the Territories, and the power of Congress to repeal such laws as the sovereigns there may pass in conflict with the Constitution. He says that he trusts "Con-"gress will see" that no act shall remain on the statute-book of Kansas, "violative of the provisions of the "Constitution, or subversive of the great objects for "which that was ordained and established."

Popular Sovereignty and State Equality cannot live in the Territories under this power of repeal in Congress. If this power of repeal exists, what is its limit? Nothing but the judgment of Congress upon the question, whether the Territorial acts are violative of the Constitution or subversive of the great objects of its creation? The objects for which the Constitution was ordained are written upon its face; and among these objects were the establishment of Justice and the security of Liberty. The Kansas acts are subversive of these objects; they legalize injustice, and put Liberty in chains; they deny the right of trial by jury, the right of habeas corpus, the right of freedom of speech and freedom of the press, and the right of personal security. Are not such denials of right subversive of the Constitution and violative of its spirit? Let him say no who can or who dare. Now, if this repealing power is in Congress, as the President very clearly admits, and if these Territorial acts be needful to support Slavery, and Congress may repeal them, what becomes of Slavery there? And if Congress has this power over the Territories, when does it cease? Of necessity, under the President's own showing, not while the Territorial organization lasts. When does that terminate? Only at the pleasure and by the consent of Congress.

I have shown that the legislative, executive and judicial departments of the Government have recognized in the most solemn manner the principle that the Territories are under the absolute control of the National Government; that by Congressional enactment Slavery may be excluded therefrom, and that new States can only be formed in the Territories subject to such conditions as Congress may prescribe. The affirmance of this power under the Constitution by the greatest names of the Republic, officially expressed in all its departments, has been stamped into the adamant of the past, there to remain forever.

Under these sanctions I repeat my proposition, that Slavery may be excluded by this Government from its Territories—that such restriction is constitutional, and may be rightfully asserted as a condition precedent upon the institution of new States and their admission into the Union.

It results from this legislation of Congress that neither Ohio, Indiana, Illinois, Michigan, Iowa, nor Wisconsin, may lawfully legalize Slavery therein, without a violation of plighted faith, of the express terms of their several enabling and organic acts, and of the plainest principles of the Constitution. They have each so declared by their fundamental law; they each complied with "the statute restriction;" they each prohibited Slavery; and that the essential principles of liberty might be "unalterably established," they each declared by their constitution that *all men* are born equally free and independent, and have the natural and inherent rights of enjoying and defending life and liberty, and of acquiring, possessing, and defending property, and that these rights are INALIENABLE. They understood the statute restriction of Congress binding and obligatory upon them *as States*, and hence their literal compliance with its requirements. They understood the sublime conception of the great fathers of the Republic, that the Slavery prohibition was perpetual and *unalterable*; that the word FOREVER, as used in the ordinance, and incorporated in their several organic and enabling acts, meant not merely until their State constitutions should be formed, but so long as the States thus organized should live. Yes Sir, "liberty "*forever* to all the inhabitants," was declared by these congressional enactments, and by the constitutions of these new States, to be the essential condition of their existence—their very breath of life. And to-day, over all that vast tract of country, covered by those six free States, comes the stirring kindling proclamation "liberty to all the inhabitants *forever*"—ay, FOREVER, until empires and nations perish, till the heavens be no more, and the earth and sea give up their dead! I would not willingly surrender a power which has worked such beneficent results.

There is but one mode of escape from the conclusion that this "statute restriction upon the institution," of new States may and should be imposed by Congress, and that is to repudiate altogether the sovereignty of the General Government over the Territories—to deny that the Territories are the property of the United States, and assert, on the contrary, in the words of Mr. Calhoun, whom the President undertakes to follow, but with "unequal step," that the Territories belong, not to the United States, but *to the several States*—"that *in the States*, SEVERALLY, reside the dominion "and sovereignty over them" (Calhoun's Works, vol. 4, p. 497). That was the only position by which that great man could make plausible his objection to the Slavery inhibition by Congress. He held that the Territories were the *common* property of the several States, held jointly for their common use, and therefore he claimed that it was *unjust and unequal* that "any "portion of the partners outnumbering another por-"tion should oust them of this common property of "theirs," or proscribe them from emigrating thither with their slave property. He did not question the power of Congress to govern the Territories, as the trustee of the States, and for *their* benefit, but denied that under the Constitution Slavery could be prohibited therein. If the States are tenants in common in the Territories—if they be the partners in this property—how can one portion of these partners outnumber another portion and oust them? surely not by legislation, for they do not legislate as States over the Territories. How then? By entering the Territory, and ousting their copartners by force, or by acts of usurpation. That, Sir, has been done already, not by the non-slaveholding partners, but by the slaveholding partners; and that is the inevitable result of Mr. Calhoun's proposition, adopted by the President, that the Territories are under the dominion and sovereignty of the States severally. That is the result of this "constitutional equality of each and all of the "States of the Union *as States*," asserted by the President, for the government of Kansas instead of the sovereignty of the nation. This attempt to secure equality to the States as such within the Territories cannot be effected. No legislation can secure it. It is impossible in the nature of things. The slaveholding States assert that men are property; the non-slaveholding States assert that men are not property, and cannot and shall not be made property! Georgia, by her Constitution, declares that the Legislature shall have no power to pass laws for the emancipation of slaves without the previous consent of *each* of their respective owners. Ohio, by her Constitution, declares that there shall be no slavery, except in punishment of crime, upon due conviction. If the domestic institutions of the several States are to obtain in the Territories, as the President asserts, how can they coexist there when they thus conflict? You might as well expect two separate and distinct substances to occupy the same place at the same time, or life and death to coexist at the same moment in the same body.

Sir, this proposition of State equality in the Territories is a mere absurdity, except upon the hypothesis that the Territories shall be partitioned. Partition would be a compromise; and when the South assumed this position, her great leader (Mr. Calhoun) told us, "Let "us be done with compromises; let us go back and "stand upon the Constitution." (Calhoun's Works, vol. 4, p. 347). I agree to that—the North agrees to that—no more compromises—we stand upon the Constitution. Then, Sir, there is to be no partition of these Territories—no apportionment of one part as slave territory, and another part as free territory. This being so, I say again, the equal dominion of the States, "as States," within the Territories is impossible. The privilege to hold slaves in the Territories for a short time, until a territorial statute or a Constitution excluding it shall have been adopted, will not secure to the States equality in the sense used by the President. It would not meet the demands of the South to permit them to go into the Territories with their slaves to-morrow, to be driven back and ousted by superior numbers the next month or the next year. To make good this demand, I say to gentlemen, you must—you will take another step, and that is, to assert your right to hold slaves within the Territories *after*, as well as *before*, their erection into States. This necessarily results, if within the Territories the *equality* of each of the States as States, is to be maintained.

Why Sir, we were told but a day or two ago by the gentleman from South Carolina (Mr. ORR), that territorial statutes were absolutely necessary to protect slave property within the Territories. Enactments to that end have already been made in Kansas by usurpers. Repeal these enactments, as I trust you will repeal them, and what sanction or protection then have you for slaves in Kansas? None, Sir, none. You have a crimes act for the punishment of murder, maiming, robbery, larceny, &c., when committed in *any place* under the exclusive jurisdiction of the United States, &c. This act, with its penalties, by its own terms, as well as by your organic law, is in full force in Kansas; but it furnishes no protection to Slavery or slave property there. If any person should steal a slave within that Territory held by another as his property, he could not be punished under that statute. If a slave should there resist his master's authority over his person, and take his master's life in defense of his own liberty, think you the slave could be held for murder under the national statute? No, sir. Why would it not be *larceny* under that statute to steal a slave in Kansas; or murder for a slave to resist the assault of his master, and slay him in defense of his liberty? Simply because larceny can only be committed of *property*; and by the Constitution of our common country, thank God, MEN are not PROPERTY, and cannot be made property, and have the right to defend their personal liberty even to the infliction of death! At common law, larceny can only be committed of property; and it is not murder to kill another in defense of your person or liberty. Our penal statute uses the terms "larceny" and "murder" only in the sense of the common law.

That men are not property under the Constitution has been declared from the Supreme Bench. In the case of Groves *et al. vs.* Slaughter, (15 Peters, p. 507) Justice McLean, speaking of slaves, says, "The charac-"ter of *property* is given them by the local law," and that "the Constitution acts upon slaves as persons and "not as property." It needs no opinion of that distinguished man and eminent jurist to establish this. If slaves were *property* under the Constitution, it would follow that they would continue property, wherever the owner might take them within the Union; and hence he might hold his slaves as property within Ohio notwithstanding her constitutional prohibition. It has been ruled that, if the owner bring his slave within that State, the slave is free. If the Constitution would protect slave property in Ohio, it would protect it in Kansas. The Constitution protects it in neither; and hence it follows that it can be protected only by local law. The gentleman from South Carolina [Mr. ORR] was right, therefore, in saying that, without territorial laws to *protect* it, slave property could not be held in the Territories. This concession, sir, while it is manifestly true, is fatal to the President's assertion of the *constitutional* and imprescriptible right of each and all of the States, as States, to hold slaves in the Territories.

The President's assertion "of imprescriptible right "of equality of the several States," is without meaning if it does not mean that the several States have extra territorial power, throughout the national domain, to enforce and maintain property in slaves. What else could he mean by saying that the *restriction* of the act of 1820 violated "the imprescriptible right of equality of the several States?" How did this restriction violate any right of *the several States*, unless they severally had the right to traffic in slaves, and hold slaves as property within the Territories? There was nothing restricted in it but Slavery within the Territory therein described.

But there is another passage in the message before us, so *happily* expressed as to leave no doubt of the President's meaning. He says:

"The *several States* of the Union are, by force of the Constitution, coequal in domestic legislative power. Congress cannot change a law of domestic relation in the State of Maine; no more can it in the State of Missouri. Any statute which proposes to do this is a mere nullity—it takes away no right—it confers none." * * * "To repeal it will be only to remove imperfection from the statutes, without affecting, either in the sense of permission or prohibition, the action of *the States* or their citizens. Still, when the nominal *restriction* of this nature, already a dead letter in law, was in terms repealed by the last Congress, in a clause of the act organizing the Territories of Kansas and Nebraska, that repeal was made the occasion of a wide spread and dangerous agitation."

Here is the assertion, plainly expressed, that the several States have coequal domestic legislative power; and that Congress cannot prohibit Slavery in the Territories, because such a restriction, if allowed and enforced, would be a prohibition upon "the action of the "States," and "change a law of domestic relation within "the States." Are the several States, "by force of the "Constitution," "coequal in domestic legislative "power?" And does that coequal legislative power extend to the Territories?

We have already seen that the six North-Western States were not coequal with the original States in domestic legislative power; that they were only permitted to form constitutions and to come into the Union on the express condition that Slavery, "the domestic rela-"tion" of some of the other States, should be *forever* excluded from their territories; that to-day those six States are in the Union upon that condition, and cannot establish the domestic institution of Slavery therein. Does this alleged "coequal domestic legislative power of the several states" extend to the several Territories? The President manifestly so concludes; else how could the Territorial prohibition of Slavery, if enforced, affect "the action of the States," or change a law of domestic relation therein? If the several States have this coequal power over the domestic institutions of the Territories, no necessity exists for local legislation there to protect the domestic relation of chattel Slavery. The law of Georgia, in that case, would follow the slave property of its citizens thither, and make it property there, and, for aught I can see, the penal laws of Georgia would also operate there for the protection of that property.

But it is useless to dwell upon a proposition so monstrous and absurd; it has no sanction in the Constitution or in reason. "The extra territorial legislative "power of every State is limited to its own citizens and "subjects." That is the decision of the Supreme Court in the great case of Worcester vs. the State of Georgia. (6 Peters, 542.) A permanent change of domicil determines citizenship.

I conclude, therefore, that the Territories are not under the dominion and sovereignty of the States *severally*; that the exclusive dominion and sovereignty over them is in the United States and can be exercised only by Congressional enactment; and that the new States within the Territories can only be formed by and with the consent of the National Government. The people of the Territories may form a State Constitution, but unless it be approved by Congress no State is organized; the Constitution so formed is a nullity, and the inhabitants remain subject to Congressional legislation. They can never become a State but pursuant to such conditions as the national will may impose, and that will is limited by nothing but the Constitution. The Constitution is based upon the EQUALITY of the human race. In the words of Washington, "It is completely free in its principles." A State formed under the Constitution, and pursuant to its spirit, must rest upon this great principle of EQUALITY. Its primal object must be to protect each human being within its jurisdiction in the free and full enjoyment of his natural rights. Mere *political* or *conventional* rights are subject to the control of the majority; but the rights of human nature belong to to each member of the State, and cannot be forfeited but by crime.

It necessarily follows that neither Slave statutes nor Slave constitutions can be made operative within the Territories, without the sanction and approval, express or implied, of Congress. The President himself concedes this; the past legislation and cotemporaneous history of the Constitution prove it. Disguise it as you may, the question which shakes the Union to-day is not whether Congress *may* govern the Territories, but HOW Congress may govern them? The question is, whether Congress shall govern the Territories in the spirit of the Constitution, and impose such "statute restrictions" upon the institution of new States therein as will require the people thereof to conform their local institutions to the Constitution, and base them upon the broad American, republican principle of *absolute equality*; or whether, by the sanction of Congressional enactment, by *force of Congressional law*, the people of the Territories shall be "perfectly free" to organize their local governments upon the narrow, proscriptive unequal principle of ABSOLUTE DESPOTISM? The question is, whether, by your law, people within the Territories shall be enabled to establish *Slavery* therein, irrespective of race, sex, age color, or condition? The question is, whether, in the organization and admission of new States, the arm of industry—that arm in which slumbers the nation's strength and the nation's security—shall be fettered.

You may call the State which enslaves and sells its own children, and manacles the hand which feeds and clothes and shelters it, *republican*, but truth, and history, and God's eternal justice, will call it despotism—equally criminal and equally odious, whether sanctioned by one or many, by a single tyrant or by the million. I deny the constitutional right of any class of men, from any State of the Union, or from any quarter of the globe, to establish such a government within the National Territories, under and by force of the National Constitution, because such a government is subversive of the great objects for which that Constitution was ordained, and violative of its spirit. Who will say that it is within the spirit of the Constitution to establish and perpetuate within our Territories the hated rule of tyrants, that might gives right; that the few may govern the many, that the strong may justly rob and oppress the weak? And who, as the representative of the people, and under his oath to the Constitution, will *sanction* such a tyranny by a solemn act of admission into the Union?

It must be apparent that the absolute equality of all, and the equal protection of each, are principles of our Constitution which ought to be observed and enforced in the organization and admission of new States. The Constitution provides as we have seen, that *no person* shall be deprived of life, liberty, or property, without due process of law. It makes no distinction either on account of complexion or birth; it secures these rights to all persons within its exclusive jurisdiction. This is equality. It protects not only life and liberty, but also property, the product of labor. It contemplates that no man shall be wrongly deprived of the fruit of his toil any more than of his life. The Constitution also provides that no title of nobility shall be granted by the United States, nor by any State of the Union. Why this restriction? Was it not because all are equal under the Constitution, and that no distinctions should be tolerated, except those which merit originates, and no nobility except that which springs from the practice of virtue, or the honest, well-directed effort of head, or heart, or hand? There is a profound significance in this restriction of the Constitution. It is an announcement of the equality and brotherhood of the human race.

I do but utter the spirit of the Constitution when I say that nobility cannot be conferred by the empty titles of a monarch, however august or however debased, bestowed upon his servile parasites, who "bow "at every nod, and simper at every word." That is not nobility, though throned in power and "clothed in purple," which crushes and enslaves the millions who lift up their haggard faces, and stretch forth their shriveled hands, asking for leave to eat of the crumbs which fall from their master's table. But, Sir, there is nobility in that patient, humble toil which makes a blade of grass to grow where none grew before, thereby giving a drop of nourishing milk to one of God's creatures. There is a nobility in that cunning handicraft which converts the wool, the cotton, the silk, and the flax into beautiful fabrics, with which the form of humanity is clothed. There is nobility in that sturdy arm of intelligent industry, which lets in the sun upon the fertile earth, which plows its fields, scatters the seed, gathers in the harvest and gives bread to the nations—which hews from the forest and the rock the material, and builds the habitations of man. There is nobility in that imperial exercise of the intellect which enlarges the measure of knowledge and lessens the ills of life; which subdues the elements of nature and makes them minister to the wants and comfort of our race; which gifts the lightning with a tongue, and makes it the swift messenger of thought and intelligence; which controls the ocean, engirdling the world with its winds and waves, and makes it the peaceful highway of commerce and civilization. There is nobility in that beneficent policy of a State which asserts the equality of all, and defends the inborn rights of each, against the combined power of all; which establishes justice, maintains liberty, rewards labor, and protects property; which dots the land all over with public schools, and thereby give to the people the power of knowledge; which builds and fosters those institutions which shelter the poor and houseless, and those other asylums in which the blind are taught to see, the deaf to hear, and the dumb to speak. This is the nobility, the ONLY nobility which our Constitution tolerates and fosters, and which the policy inaugurated by its illustrious founders develops. For evidence of this, I point you to the six Free States of the North-West—the offspring of that policy—with their seven millions of freemen, with their free homes, their free schools, their free thought, their free press, their free labor, and their general and all pervading intelligence. The President would strike down this policy under the false pretexts that it is violative of popular sovereignty and State equality. As a representative of the American people I cannot consent to that; it would be an act of political suicide; it would disturb the repose of the dead, and blast the hopes of the living. I would maintain that policy inviolate. I would extend it over all the national Territories until that vast belt of the earth's surface, stretching from the confines of Iowa to the golden gates of the Pacific, shall be filled with this new order—this mighty brotherhood of human virtue and human industry.

THE ACCIDENT ON THE NEW-YORK AND ERIE RAILROAD.—The following telegraphic dispatch, in reference to the catastrophe mentioned in our paper of Monday, was sent to Superintendent McCallum by the Division Superintendent:

"HAWKINS, Jan. 18—10:20 p. m.

"The Cincinnati Express of yesterday ran off the track between Lordville and Hawkins. A baggage-car, tender, and two passenger cars went down the bank, a distance of fifteen feet, and set on the ice of the Delaware River. One passenger was killed, and about twenty more or less injured—none seriously. All except three of the passengers went forward by the New-York Express. Baggage badly broken up. The person killed was a sailor. His parents reside in Brooklyn. His name is Lewis Harrison. The accident was caused by a broken chain, which allowed the rail to become displaced."

EDWARD SMITH is our Agent for the sale of THE TRIBUNE in BURLINGTON, Vt.