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THE DIVIDING LINE BETWEEN FEDERAL AND LOCAL AUTHORITY.

POPULAR SOVEREIGNTY IN THE TERRITORIES

BY STEPHEN A. DOUGLAS!

From Harper's Monthly for Sep—ber 1

[CONCLUDED.]

It is from this clause of the Constitution alone that Congress derives the power to provide for the survey and sale of the public lands and all other property belonging to the United States, not only in the Territories, but also in the several States in the Union. But for this provision, Congress would have no power to authorize the sale of the public lands, military sites, old ships, cannon, muskets, or other property, real or personal, which belong to the United States, and are no longer needed for any public purpose. It refers exclusively to property in control, not to persons and commerce. It does not confer upon Congress the power to make all needful rules and regulations" in the States or in the Territories, and extends wherever there may be any land or other property belonging to the United States to be regulated or disposed of; but does not authorize Congress to control or interfere with the domestic institutions and internal policy of the people either in the States or in the territories, who may reside upon lands which the United States owns owned. Such a power, had it been vested in Congress, would annihilate the sovereignty and freedom of the States as well as the great principle of self-government to the territories, whenever the United States happen to own a portion of the public lands within their respective limits, as, at present, in the States of Alabama, Florida, Mississippi, Louisiana, Arkansas, Missouri, Illinois, Indiana, Ohio, Michigan, Wisconsin, Iowa, Minnesota, California and Oregon, and in the territories of Washington, Nebraska, Kansas, Utah, and New Mexico. The idea is repugnant to the spirit and genius of our complex system of government; because it effectually blots out the dividing line between federal and local authority which it was an essential object for the framers of the independence of the States and the liberties of the people against federal invasion. With one anomalous exception, all the powers granted to Congress are federal and not municipal, in their character—affecting the general welfare of the whole country without interfering with the internal policy of the people—such as levying duties on imports, which apply alike to States and territories. The exception, being in derogation of one of the fundamental principles of our political system (because it authorizes the federal government to control the municipal affairs and internal policy of the people in certain specified, limited localities,) was not left to vague inference or loose construction, not expressed in ambiguous or doubtful terms, but is most plainly written in that section of the constitution which says:

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

No such power is exercise exclusive legislation in all cases whatsoever, or any legislation in any case whatsoever, is conferred on Congress in respect to the municipal affairs and internal policy of the States or of the territories. On the contrary, after the Constitution had been finally adopted, with its federal powers delegated, enumerated, and defined, it was felt that it was not safe even against any possible infringement of the reserved rights of the States, or of the people, an amendment was incorporated into the Constitution which made the fact doubly sure that the federal and local authority so directly and indelibly that no lapse of time, no partisan project, no usurpation, no judicial aggrandizement, no federal mandate, can ever alter it. The amendment is in these words:

"The powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

This view of the subject is confirmed, if any corroborative evidence is required, by reference to the proceedings of the convention of the federal convention as reported by Mr. Madison. On the 18th of August, after a series of resolutions had been adopted, at the basis of the proposed constitution, and referred to the committee of detail for the purpose of being put in proper form, the record says:

"Mr. Madison suggested, and it was agreed to be referred to the Committee of Detail, the following powers, as proper to be added to those of the general legislature, (Congress:)

"Sixth, of the unappropriated lands of the United States.

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

"To make all needful rules and regulations for the disposal and settlement of the Indians, as well within as without the limits of the United States.

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

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

The provision empowering Congress "to institute temporary governments for the new States arising in the unappropriated lands of the United States," taken by itself, and with the one empowering Congress "to exercise exclusively legislative authority at the seat of government of the United States, and over a district of country around the same," clearly shows the difference in the extent and nature of the powers intended to be conferred in the new States carved out of the territories of the United States or Columbia on the other. In the one case it was proposed to authorize Congress "to institute temporary governments for the new States," as a means to an end, the end being, that as our Revolutionary fathers recognized the right of the British crown to institute local governments in the colonies, by issuing charters, under which the people of the colonies were "entitled (according to the bill of rights adopted by the Continental Congress) to a free government, and exclusive power of legislation in their several provincial legislatures, where their right of representation can alone be preserved in all other cases of taxation and internal polity," so, while, in the other case, it was proposed to authorize Congress to exercise exclusively legislative authority over the municipal and internal policy of the people residing within the district which should be ceded for that purpose in the seat of the general government.

Each of these provisions was modified and perfected by the committees of detail and revision, as it appears by comparing them with the corresponding clauses as finally adopted and inserted into the Constitution. The provision to authorize Congress to institute temporary governments for the new States arising in the territories, is made to read as follows:

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

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

If judicial authority were deemed necessary to give force to principles which are plainly just in themselves, and which form the basis of our entire political system, such authority may be found in the opinion of the Supreme Court of the United States in the "Dred Scott" case. It thus case the Court says:

"This brings us to examine by what provision of the constitution the present federal government, or any branch or department of it, is authorized to acquire territory outside of the original limits of the United States, and what power it may exercise over it when so acquired, either over the person or property of a citizen of the United States, while it remains a territory and until it shall be admitted as one of the States of the Union.

"There is certainly no power given by the constitution to the federal government to establish or maintain colonies bordering on the United States, and subject to their control and governed at its own pleasure; nor to enlarge its territorial limits in any way except by the admission of new States."

"The power to make the territory of the United States by the admission of new States is plainly given, and in the construction of this power by all the departments of the government, it has been held to authorize the acquisition of territory, not for the admission at the time, but to be admitted at some future period. Territory acquired by treaty is held to be a country belonging to the United States, and which can be added to the Union, and children born within it are citizens of the United States, and are entitled to all the rights and privileges of citizens in every State and territory in which the laws of the United States are allowed to prevail and have their full force and effect wherever they may be.

"These powers are plainly and necessarily implied from the nature of the government and the character of the United States, and are fully sustained by the decisions of the Supreme Court. Under the power to admit new States, Congress may, in the exercise of a sound discretion, think it proper, in the first instance, to attach a portion of the territory to a single State, if it be in its opinion, for the interest of the United States and of the territory that it should be so. Or it may, in the exercise of the same discretion, form it into a separate territory, or attach it to other States in such manner as it may deem most conducive to the interests of the United States and of the people who may reside in the territory. But, however it may be formed or governed, it is a territory belonging to the United States, and the inhabitants are not in a condition to claim the exercise of any of the powers of self-government, except such as Congress may think proper to confer upon them, until they are admitted as a State or States to the Union. While it is a territory, Congress may exercise the powers of a municipal legislature in all rightful subjects of legislation consistent with the constitution, and may, if it deems it expedient, confer the elective franchise upon such persons as it may think proper, and may change or withdraw it at pleasure. It may, perhaps, do no particular injustice to the inhabitants of a territory for a long period of years, to withhold from them the right of self-government, which belongs to the people of the States and Territories, as well as the Federal Government, and which can be withheld from them only by the exercise of despotic power. But it is a power which Congress can not rightfully exercise over the citizens of the United States in any Territory or place subject to the jurisdiction of the United States, while it is a Territory, and which it may not exercise over the citizen in any State in the Union, after it has been admitted as a State, or been recognized as a State by the Federal Government. The 3d section of the 4th article of the constitution, which has been so often referred to in the discussion of this question, and which is usually known as the "territorial clause" of the constitution, and under which all the laws have been passed by Congress for the government of the Territories, while they are in that condition, and which has been so often the subject of adjudication in the Supreme Court of the United States, and in which the Court have always concurred in the construction given to it by the political department of the government, and which has been never questioned by any other department of the government, or any of its officers, when acting in that capacity, is in these words:

"The power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States, shall be made, under the authority of the United States, shall be construed to prejudice any claim of the United States, nor by the laws thereof, nor by the laws of any State, shall be so construed, but under the laws of the particular State where such service or labor may be due.

It was necessary to give this exact definition of slavery in the constitution in order to satisfy the people of the North as well as of the South. The slaveholding States would not consent for a moment that their domestic relations—and especially their right to property in their slaves—should be dependent upon federal authority, or that Congress should have any power under the clause in question to interfere with the subject—either to extend, confine, or restrain it; to protect or regulate it—lest, under the pretence of protection and regulation, the federal government should abolish slavery in the States, and increasing anti-slavery sentiment which prevailed at that period, might destroy the institution, and divest those rights of property in slaves which were secured to the Southern States and constitutions of their respective States so long as the federal government had no power to interfere with the subject.

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

It will be observed that the term "State" is used in this provision, as well as in various other parts of the constitution, in the same sense in which it was used by Mr. Jefferson in his plan for establishing governments for the new States in the territory ceded and to be ceded to the United States, and by Mr. Madison in his proposition to confer on Congress power to institute temporary governments for the new States arising in the unappropriated lands of the United States, to designate the political communities, territories as well as States, within the dominion of the United States. In no instance is the word "State" used in the same sense in the ordinance of the 13th of July, 1787, for the government of the territory northwest of the river Ohio, which was passed by the remnant of the Congress of the confederation, sitting in New York while the members of the convention were at Philadelphia, as delegates to the federal convention, aiding in the formation of the constitution of the United States.

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

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

It must be borne in mind that in each of these cases where the power is not expressly delegated to Congress, the prohibition is not imposed upon the federal government, but upon the States. There was no necessity for such prohibition upon Congress or the federal government, for the reason that the omission of delegated any such power to Congress was of itself a prohibition, and so declared to express terms by the 10th amendment, which declares that "the powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

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

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

On the 29th of January, 1849, Mr. Clay introduced into the Senate a series of resolutions upon the slavery question, which was intended to form the basis of the subsequent legislation on that subject. Pending the discussion of these resolutions, the chairman of the committee on territories prepared and reported to the Senate, on the 25th of March, two bills—one for the admission of California into the Union of the States, and the other for the organization of the territories of Utah and New Mexico, and for the adjustment of the disputed boundary with the State of Texas, which were read and twice prided for the use of the Senate. On the 19th of April a select committee of thirteen was appointed, on motion of Mr. Foote, of Mississippi, of which Mr. Clay was made chairman, and to which were referred all pending propositions relating to the slavery question. On the 8th of May, the Clay, from the select committee of thirteen, submitted to the Senate an elaborate report covering all the points in controversy, accompanied by a bill, which is usually known as the "Omnibus bill." By reference to the provisions of this bill, as it appeared on the files of the Senate, it will be seen that it was composed of the two printed bills which had been reported by the committee on territories on the 25th of March previous; and that the only material change in its provisions, involving an important and essential principle, is to be found in the tenth section, which prescribes and defines the powers of the territorial legislature. In the bill, as reported by the committee on territories, the legislative power of the territories extended to "all rightful subjects of legislation consistent with the constitution of the United States," without excepting African slavery; while the bill, as reported by the committee of thirteen, conferred the same power on the territorial legislature, with the exception of African slavery. This portion of the section in its original form read thus:

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

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

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

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

"I am not perfectly sure that I comprehend the full meaning of the amendment offered by the Senator from Mississippi. If I do, I think he accomplishes nothing by striking out the clause now in the bill and inserting that which he proposes to insert. The clause now in the bill is, that the territorial legislation shall not extend to anything respecting African slavery within the territory. The effect of retaining the clause as reported by the committee will be this: That if in any of the territories slavery now exists it shall not be abolished by the territorial legislature; and if in any of the territories slavery does not now exist it cannot be introduced by the territorial legislature. This clause itself was introduced into the bill by the committee for the purpose of tying up the hands of the territorial legislature in respect to legislating at all, one way or the other, upon the subject of African slavery. It was intended to leave the legislature and the law of the territories in the condition in which the act will place them. Excited on a former occasion that I did not, in committee, vote for the amendment moved by the gentleman from Kentucky, I thought it was proper to offer the amendment which I have proposed to be introduced by a majority of the committee. I attached very little consequence to it at the time, and I attach very little at the present time to the amendment which I have proposed. I do not understand him as proposing that if any one shall carry slaves into the territory—although by the laws of the territory he cannot take them there—the legislative hands of the territorial government should be so tied as to prevent the exercise of any power which may be brought to bear upon the property or the fruits of their labor. If the Senator from Mississippi means to say that—"

Mr. Davis:

"I do not mean to say it."

Mr. Clay:

"If the object of the Senator is to provide that if slaves are introduced, into the territory contrary to the law, by a person held to service or labor in one State, under the laws thereof"—not under the constitution of the United States, nor by the laws thereof, nor by the laws of any federal authority whatsoever, but under the laws of the particular State where such service or labor may be due.

It was necessary to give this exact definition of slavery in the constitution in order to satisfy the people of the North as well as of the South. The slaveholding States would not consent for a moment that their domestic relations—and especially their right to property in their slaves—should be dependent upon federal authority, or that Congress should have any power under the clause in question to interfere with the subject—either to extend, confine, or restrain it; to protect or regulate it—lest, under the pretence of protection and regulation, the federal government should abolish slavery in the States, and increasing anti-slavery sentiment which prevailed at that period, might destroy the institution, and divest those rights of property in slaves which were secured to the Southern States and constitutions of their respective States so long as the federal government had no power to interfere with the subject.

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

It will be observed that the term "State" is used in this provision, as well as in various other parts of the constitution, in the same sense in which it was used by Mr. Jefferson in his plan for establishing governments for the new States in the territory ceded and to be ceded to the United States, and by Mr. Madison in his proposition to confer on Congress power to "institute temporary governments for the new States arising in the unappropriated lands of the United States," to designate the political communities, territories as well as States, within the dominion of the United States. In no instance is the word "State" used in the same sense in the ordinance of the 13th of July, 1787, for the government of the territory northwest of the river Ohio, which was passed by the remnant of the Congress of the confederation, sitting in New York while the members of the convention were at Philadelphia, as delegates to the federal convention, aiding in the formation of the constitution of the United States.

"Provided further, That nothing herein contained shall be construed as authorizing or permitting the introduction or the holding of persons in slavery in any of the territories."

Upon these amendments—the one affirming the pro-slavery and the other the anti-slavery principle—by a vote in favor of the right of the people of the territories to form the slavery question for themselves:—Mr. Douglas said:

"The position that I have ever taken has been that I would vote to repeal all laws relating to the domestic affairs and domestic policy of the territories, ought to be left to the decision of the people themselves; and that we ought to be content with whatever they may decide the question, because they have a much deeper interest in these matters than we have, and know much better what institutions suit them than we, who have never been there, can decide for them. I would therefore have much preferred that that portion of the bill should have remained as it was reported from the committee on Territories, with no provision on the subject of slavery, the one way or the other. And I do hope yet that that clause will be stricken out. I am satisfied, sir, that it gives no strength to the bill. I am satisfied, even if it did give strength to it, that it ought not to be there, because it is a violation of principle—a violation of that principle upon which we have all rested our defence of the measures we have taken on this question. I do not see how those of us who have taken the position we have taken—that of non-intervention—and have argued in favor of the right of the people to legislate for themselves on this question, can support such a provision without abandoning all the arguments which we used in the Presidential contest of 1848, and all the principles set forth by the Hon. Senator from Michigan (Mr. Cass) in that letter which is known as the 'Nicholson Letter.' We are now called upon to abandon every principle and every doctrine that we have advanced, and have required to abandon those principles, and to stultify ourselves, and to adopt the opposite doctrine, for what? In order to say, that the people of the territories shall not legislate upon institutions as they shall deem adapted to their condition and their wants. I do not see, sir, that any such provision can be accepted, either to the people of the North or the South."

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

The Senator from Mississippi puts the question to me as to what number of people there must be in a territory before this right to govern themselves accrues. I do not recollect the precise number, I will assume that the right ought to accrue to the people at the moment they have enough to constitute a government; and, Sir, the bill assumes that fifteen people enough there to require a government; and, enough to authorize the people to govern themselves."

"Your bill concedes that a representative government is necessary—a government founded upon the principles of popular sovereignty, the people of the territory to make their own laws; and for this reason you give them a legislature composed of two branches, to be chosen by the people of the different States and territories of the Union. You carry out the principle when you propose to let them the right to legislate on "all rightful subjects of legislation," except negroes. Why except negroes? Is not negro slavery a subject of legislation? If the inhabitants are competent to govern themselves upon all other subjects, and in reference to all other descriptions of property—if they are competent to make laws and determine the relations between husband and wife, and parent and child, and municipal laws affecting the rights and property of citizens generally, they are competent to make laws to govern themselves in relation to slavery and negroes."

While reference to the protection of property in slavery, Mr. Douglas said:

"I have a word to say to the honorable Senator from Mississippi (Mr. Davis.) He insists that I argue not in favor of protecting property, and that his amendment is intended for the purpose of protecting property under the constitution. Now, sir, I ask you what property is there to be protected? Do I not desire to protect property here? Am I not to allow the people to pass such laws as they deem proper respecting their rights to property? Without entering into discussions I might just as well say that I am opposed to protecting property in merchandise, in steamboats, in cattle, in real estate, as to say that I am opposed to protecting property of any other description, for I desire to put them all on an equality and allow the people to make their own laws in respect to the whole of them."

Mr. Cass also spoke in favor of the amendments offered by Mr. Davis and Mr. Chase):

"Now with respect to the amendments, I shall vote against them both; and then I shall take occasion to move a further amendment to the bill upon the power of the territorial governments. I shall do so upon this ground: I was opposed, as the honorable Senator from Kentucky has declared he was, to the insertion of this prohibition by the committee on territories; it is inexpedient and unconstitutional. I have already stated my belief that the rightful power of a territory, like those of a State, shall decide for themselves whether slavery shall or shall not exist within their limits."

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

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

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

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

Which was rejected—yeas, 23; nays, 33.

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

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

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

On the 14th of August, the bill for the organization of the territory of New Mexico was taken up, and amended so as to conform fully to the provisions of the Utah act in respect to the power of the territorial legislature over "all rightful subjects of legislation consistent with the constitution," without excepting African slavery, and was ordered to be engrossed for a third reading without a division; and on the next day the bill was passed Yeas, 27; nays, 10.

These two bills were sent to the House of Representatives for concurrence, and were passed without any alteration in respect to the power of the territorial legislatures over the subject of slavery, and were approved by President Fillmore, September 9, 1850.

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

On the 4th of January, 1854, the committee on territories of the Senate, to which had been referred a bill for the organization of the territory of Nebraska, reported back the bill, with an amendment, in the form of a substitute for the entire bill, which, with some modifications, is now known on the statute book as the Kansas-Nebraska act. The report accompanied by a report explaining the principles upon which it was proposed to organize these territories, as follows:

"The proposed amendments which your committee deem it their duty to commend to the favorable action of the Senate, in a special report, are those in which the principles contained in the compromise measures of 1850, so far as they are applicable to territorial organizations, are proposed to be affirmed and carried into practical operation within the limits of the new territory. The wisdom of those measures is attested, not less by their salutary and beneficial effects in allaying sectional excitement, and restoring fraternal feeling, than by the cordial and almost universal approbation with which they have been received and acquiesced in by the whole country.

"In the judgment of your committee, those measures were intended to have a far more comprehensive and enduring effect than the mere settlement of the slavery question, growing of the recent acquisition of Mexican territory. They were designed to establish certain great principles, which would not only furnish adequate remedies for existing evils, but in all time to come, avoid the perils of a similar agitation by withdrawing the question of slavery from the halls of Congress and the legislatures of the states, and committing it to the arbitrament of those who were immediately interested in and alone responsible for its consequences. With these views, your committee adhere to the settled policy of the government, sanctioned by the approving voice of the American people, your committee have deemed it their duty to carry into effect the principles of the territorial bill, the principles and spirit of these measures."

After presenting and reviewing certain provisions of the bill, the committee concludes as follows:

"From these provisions, it is apparent that the compromise measures of 1850 affirm and establish the following propositions:

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

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

"Third—That the provisions of the United States in respect to fugitives from service, is to be carried into faithful execution in all the existing territories, and will be in those hereafter to be formed, to the same extent as in the States. The substitute for the bill which your committee have prepared, and which is recommended to the favorable action of the Senate, proposes to carry into practical operation these principles in practical operation, in the precise language of the compromise measures of 1850."

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

"Provided, That nothing herein contained shall be construed to impair the rights of property in said territory, as now established by the laws thereof, but the same may be protected, and the slaves therefrom, in the same manner as property of the same description is protected by the laws of the United States, nor by the laws thereof, nor by the laws of any other federal authority whatsoever, but under the laws of the particular State where such service or labor may be due.

It was necessary to give this exact definition of slavery in the constitution in order to satisfy the people of the North as well as of the South. The slaveholding States would not consent for a moment that their domestic relations—and especially their right to property in their slaves—should be dependent upon federal authority, or that Congress should have any power under the clause in question to interfere with the subject—either to extend, confine, or restrain it; to protect or regulate it—lest, under the pretence of protection and regulation, the federal government should abolish slavery in the States, and increasing anti-slavery sentiment which prevailed at that period, might destroy the institution, and divest those rights of property in slaves which were secured to the Southern States and constitutions of their respective States so long as the federal government had no power to interfere with the subject.

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

It will be observed that the term "State" is used in this provision, as well as in various other parts of the constitution, in the same sense in which it was used by Mr. Jefferson in his plan for establishing governments for the new States in the territory ceded and to be ceded to the United States, and by Mr. Madison in his proposition to confer on Congress power to "institute temporary governments for the new States arising in the unappropriated lands of the United States," to designate the political communities, territories as well as States, within the dominion of the United States. In no instance is the word "State" used in the same sense in the ordinance of the 13th of July, 1787, for the government of the territory northwest of the river Ohio, which was passed by the remnant of the Congress of the confederation, sitting in New York while the members of the convention were at Philadelphia, as delegates to the federal convention, aiding in the formation of the constitution of the United States.

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

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

It must be borne in mind that in each of these cases where the power is not expressly delegated to Congress, the prohibition is not imposed upon the federal government, but upon the States. There was no necessity for such prohibition upon Congress or the federal government, for the reason that the omission of delegate any such power to Congress was of itself a prohibition, and so declared to express terms by the 10th amendment, which declares that "the powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

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

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

On the 29th of January, 1849, Mr. Clay introduced into the Senate a series of resolutions upon the slavery question, which was intended to form the basis of the subsequent legislation on that subject. Pending the discussion of these resolutions, the chairman of the committee on territories prepared and reported to the Senate, on the 25th of March, two bills—one for the admission of California into the Union of the States, and the other for the organization of the territories of Utah and New Mexico, and for the adjustment of the disputed boundary with the State of Texas, which were read and twice prided for the use of the Senate. On the 19th of April a select committee of thirteen was appointed, on motion of Mr. Foote, of Mississippi, of which Mr. Clay was made chairman, and to which were referred all pending propositions relating to the slavery question. On the 8th of May, the Clay, from the select committee of thirteen, submitted to the Senate an elaborate report covering all the points in controversy, accompanied by a bill, which is usually known as the "Omnibus bill." By reference to the provisions of this bill, as it appeared on the files of the Senate, it will be seen that it was composed of the two printed bills which had been reported by the committee on territories on the 25th of March previous; and that the only material change in its provisions, involving an important and essential principle, is to be found in the tenth section, which prescribes and defines the powers of the territorial legislature. In the bill, as reported by the committee on territories, the legislative power of the territories extended to "all rightful subjects of legislation consistent with the constitution of the United States," without excepting African slavery; while the bill, as reported by the committee of thirteen, conferred the same power on the territorial legislature, with the exception of African slavery.

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