W. Phillips Esq
With copies of
L. C. Adams

SENATE.... ....No. 50.

REPORT

ON THE

ANNEXATION OF TEXAS

TO THE

UNITED STATES.

Commonwealth of Massachusetts.

In Senate, Jan. 10, 1838.

Ordered, That so much of the Governor's Address as relates to the Resolutions of Rhode Island concerning the Annexation of Texas to the Union be referred to Messrs. Alvord and May, with such as the House may join.

Sent down for concurrence,

CHA'S CALHOUN, *Clerk.*

House of Representatives, Jan. 12, 1838.

Concurred, and the House join on its part

Messrs. Lincoln, *of Worcester*,
Colby, *of Taunton*,
Browne, *of Lynn.*

L. S. CUSHING, *Clerk.*

Commonwealth of Massachusetts.

In Senate, Feb. , 1838.

The Joint Committee to whom was referred "*so much of the Governor's address as relates to the resolutions of Rhode Island concerning the annexation of Texas to the Union*," and to whom were also referred the petition of Asa Stoughton and others, legal voters of the town of Gill, and sundry other petitions of many thousand citizens of this Commonwealth, praying the Legislature "*to protest without delay against the annexation of Texas to this Union*," have attended to the duty assigned them, and beg leave respectfully to

REPORT:

The Committee were impressed in the commencement of their duties with the grave and deep importance of the subject committed to them, and this impression has increased at every step of their progress in its investigation. They heartily respond to the language of his Excellency, when, in giving his estimate of its magnitude, he declares the proposition for the annexation of Texas to be "*a measure surveyed in all its aspects, among the most momentous ever submitted to the People of the*

United States, involving considerations both of domestic and foreign policy of the gravest and most alarming character," and that "*the avowed objects of the incorporation of this vast territory into our Union are doubly fraught with peril to its prosperity and permanency.*"

The Legislature of Rhode Island deny the *competency* of any branch of the Federal Government to effect this object, and allege that it can only be accomplished by the exercise of the reserved sovereignty of the people.

In the precise and eloquent language of the preamble of the resolutions, to which his Excellency has reference, they declare that "this limited Government (of the United States,) possesses no power to extend its jurisdiction over any foreign nation; and no foreign nation, country or people can be admitted into this Union but by the sovereign will and free act of all and each of these United States; nor without the formation of a new compact of Union; and another frame of government radically different, in objects, principles and powers from that which was framed for our own self-government, and deemed to be adequate to all the exigences of our own free Republic."

The Legislature of Ohio, in more recent resolutions, which were unanimously adopted, "solemnly declare, that *Congress* has no power conferred on it by the Constitution of the United States to consent to such annexation; and that the people of Ohio cannot be bound by any such covenant, league, or arrangement, made between Congress, and any foreign state or nation."

A similar opinion has been expressed by the Legislature of Vermont at their last session, while on the other hand, the Legislatures of Tennessee, South Carolina, and Mississippi, by urging upon the Government the adoption

of this measure, *imply* that it is invested with sufficient powers for its accomplishment.

This issue presents a very serious constitutional question, involving a consideration of the structure and powers of our Federal Government, and having important relations even aside from the merits of the present controversy.

It is assumed, in the resolutions of Ohio, that the only practical question now presented upon this subject is as to the powers of *Congress*. And such seems to be its true position. The proposition for the annexation of Texas has been formally made by her minister to our Executive, and the proposition was waived, for reasons, (aside from the constitutionality of the measure, which was questioned,) still existing, and which are likely long to continue. It is true, also, that it has never been pretended, that there was any other power in the government besides that of Congress competent to the perfection of such a measure.

The *territory* of Louisiana like that of Florida, was acquired by treaty of purchase, but it was never supposed or contended by any, that this gave to its citizens the right to participate in any of the political powers of the United States, till afterwards, when Congress, in the rightful or wrongful exercise of its authority, formally admitted it into the Union.

The present measure which proposes the annexation of a *foreign* COUNTRY to our body has indeed no precedent in any act of our government, but is to be widely distinguished from those other acquisitions of territory by the Executive and admissions of states by the Congress, which are urged to sanction it: yet these important features in our history, have so far a connexion with the

questions, which this measure involves, and have been so interwoven with its discussion, that the Committee cannot pass them entirely without notice. The conduct of our government in these instances, supposes two distinct powers.

1. An authority in the Executive to acquire by treaty of purchase, the *colonial territory* of a foreign nation.

2. An authority in Congress, *after* such acquisition, to admit into the Union, a state created in such territory.

These powers, if they exist at all, are vested in different departments of the government: are distinct in their character: and, it will be seen hereafter, must be independent in their exercise. The exercise of the first is indeed necessary to the existence of the last, but the last does not follow from, nor is it established by the first. It may well be, that the one is a legitimate power of the Executive, while yet the other is not a legitimate power of Congress or any other department in the government. There is no inconsistency in maintaining that Florida, for instance, was rightly acquired by treaty, and is now properly one of the *territories* of the United States, (as has been indeed decided by the Supreme Court in American Ins. Co. *vs.* Carter, 1 Peters, R. 516,) and, at the same time, that there is no authority in the government to erect it into *a State*, but that it must remain, and be governed as a *territory* with no right in its citizens to participate in the *political powers* of the Union, till an alteration in the constitution, or a consent in some form to its change of relation by the *people* and the *States*. This distinction is by no means new, or adopted for the purpose of avoiding the decision of the Supreme Court. It is as old as the origin of the question. It was asserted by Uriah Tracy, in the Debates on the Louisiana Treaty in 1803,

in which he admitted that Louisiana might be rightfully acquired as a possession, but denied that it could be admitted into the Union as a State, and his argument, of which, but scanty records are left, was then pronounced by John Quincy Adams, a friend of the treaty, to be "unanswerable." The position thus early assumed, the Committee believe to be the true doctrine of the constitution.

When Louisiana was afterwards in 1812, admitted as a State, into the Union, the voice of Massachusetts was against the exercise of such a power by Congress. Nor did her opposition stop with the admission. In 1813, by her Legislature, she protested against the measure, and declared "that the admission into the Union of States, created in countries not comprehended within the original limits of the United States, is not authorized by the letter or the spirit of the federal constitution."

Although the Committee are aware, that the annexation of Texas in the present position of the question, might be resisted on constitutional grounds more universally admitted, if not more manifest, than those embodied in this resolution, still by a negociation with *Mexico* instead of *Texas*, for the territory of the latter, or in the possible exercise of *war* powers, that position may be changed, so as to present the precise issue formed by the resolution. And the Committee think it due to the previous opinions of the Legislature of this Commonwealth, as well as to those of other states which have more recently been expressed, to review this ground, before they develope the broad distinction between the question now presented as to the annexation to this country of the *foreign nation* of Texas, and those questions which arose in the acquisition of the *colonial territory* of France, by the

treaty of April 30, 1800, at Paris, and the subsequent admissions of Louisiana, Missouri, and Arkansas, each embracing portions of that territory, into the Union.

Is then Congress invested with power to admit into this confederacy, States, created in territories beyond the limits of the United States, as they were settled by the treaty of peace of 1783, and existed at the time of the adoption of the constitution?

Such a power obviously cannot be derived by construction as incidental to the general nature of our government. If indeed, which is the favorite doctrine of some of the most prominent of our southern statesmen, this Union is but a compact or league of the States, such a power would be at war with its very structure; for it is as true of the Association of States, as that of individuals, and results indeed from the very nature of the compact, that no new member can be admitted into the *partnership*, without the agreement of *each* of the others. No majority however large, have power to effect this, for all and each have a right to say with whom they will or will not be connected, and may object as well to the introduction of new parties as to the affixing of new and different terms and conditions to their contract. And so far is this principle carried in the *civil* law, which has entered largely into the interpretation of the law of nations, that not even the express agreement of the parties in the formation of their association, nor any *general* consent is competent to control it, but the power to judge in each individual case is inalienable. If then this government be but a compact of separate and independent sovereignties, as is contended by those very statesmen, who are the warmest friends of this annexation, then, from this doctrine of the civil law, it would follow, not only that this right of annexation did

not belong to the government, as an incident to its sovereignty, but that even an *express provision* in the constitution, would not avail for this purpose, because it would be inconsistent with the very nature of the confederacy. If this argument would prove too much, and lead to absurdity, the Committee are not responsible for its consequences. They leave the explanation to those, who give their assent to the proposition contained in the first of the well-known resolutions of Mr. Calhoun, which was adopted in the Senate of the United States, by a large majority, viz. "That in the adoption of the Federal Constitution, the States adopting the same, acted severally, as free, independent, and sovereign States; and that each, for itself, by its own voluntary assent, entered the Union with the view to its increased security against all dangers, *domestic* as well as foreign, and the more perfect and secure enjoyment of its advantages, natural, political, and social."

But upon those, who contend for the more enlarged and liberal construction of our constitution, this view of the question is by no means lost. For they admit that this government is, in some sense, "a confederacy," a "Union of the States," though they believe it to be also something more, to wit, a government of the people. Thus it was the opinion of Mr. Madison, that it was "neither entirely a national or a confederated government, but a mixture of both." In the Federalist, it is said, the constitution is in strictness neither a national nor a federal constitution, but a composition of both." (The Federalist, No. 39. See also 1 Story's Comm. 269, *et seq.*) Now although this power to admit States, not contemplated at the time of the formation of the constitution, might belong to the government in virtue of its *national*, as it

could not in virtue of its merely *federal* character, yet as its exercise must operate upon and effect federal relations, it is so far inconsistent with the structure of the constitution, and *very strong evidence* should be found in the explicit provisions of the instrument itself, to authorize a belief in its existence. Mere general words, which might have other objects, ought not to be sufficient:—for they should be limited to those purposes, which would be consistent with the spirit of its whole structure. And yet the only clause in the constitution, which is supposed to give Congress this authority, is one, general in its terms; which had other and sufficient objects well known and contemplated at the time; and which ought to be limited to those objects, not only by the considerations before stated, but, as the Committee believe, by every rule of sound construction.

The clause referred to is the third Section of the fourth Article of the Constitution, and is in these words, "New States may be admitted by the Congress into this Union; but no new State shall be formed and erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States or parts of States, without the consent of the Legislature of the States concerned, as well as of the Congress," and provision is made in the same section for the government of territories.

Before examining these provisions particularly, and comparing them with other parts of the constitution, it is necessary to take a short view of the antecedent situation of the country, and the history of the times, in reference to which all such instruments are to be construed. The limits of the "United States," were definitely fixed by the treaty of peace of 1783. These limits consisted not only of organized States, but also of territories, which

had no state governments, but were the dependencies and property of the United States. By the ordinances of the federal Congress passed *previously* to the adoption of the constitution, it was determined that these territories should be formed into new states upon certain conditions therein specified. At the time of that adoption they were still merely territories, though within the well recognized limits of the United States. Some provision would of course be made in the constitution for their admission into the Union, in fulfilment of the pledge of Congress. The creation of new states within the limits of the United States, then, undoubtedly was an object, and your Committee believe it was the only object, of the clause in question. Such would seem, indeed, to be the fair meaning of the words, taken by themselves in reference to the circumstances. But this construction is greatly fortified by an examination of other parts of the constitution, its general scope and design, and by applying those universally admitted rules of interpretation, which tend to develope the intention of its framers.

In order to determine whether the words should have the more enlarged or the more limited sense, we should, in the first place, *consider the nature and objects of the constitution*, "*as apparent from the structure of the instrument, viewed as a whole.*" (1 Story's Comm. 387.) "We ought" (says Vattel in treating of the rules of construction,) "to consider the whole together in order perfectly to conceive the sense of it, and to give to each expression not so much the signification it may receive *in itself*, as that it ought to have from the thread and spirit of the" instrument. (Vattel B. 2 ch. 17, § 285.)

The preamble of the Constitution is the best exponent of "its nature and objects," of "its spirit and scope."

It is in these words:

"We, *the people of the United States*, in order to form a more *perfect union*, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty *to* OURSELVES *and* OUR POSTERITY, do ordain and establish this Constitution FOR *the United States of America.*"

This preamble explains, briefly and clearly, the objects and nature of the Constitution. It states, *by whom*, it was made; *for whom*, it was made; and *over whom*, it was intended to diffuse its blessings. There is not a suggestion, which looks to or supposes any farther participation in its powers or obligations than by those included within "*the United States*," (whose territory was defined by the treaty of peace,) and any enlargement of these to further limits would be to extend them without its scope, and beyond its objects. It would be, indeed, the establishment without authority of "another frame of government radically different" from our own. When, therefore, general words are used in other parts of the instrument, they are to be construed in reference to, and are to be limited by, this exposition of its general principles and purposes. For "we should take the words in the sense that agree with the subject and matter. If the subject or the matter treated of will not allow that the terms should be taken in their full extent, we should limit the sense accordingly." (Vattel, B. 2, ch. 17, § 295.) When, then, reference is had to "new states" which are to be created, the words should be understood on this sound rule of construction, to include only the new states contemplated within the original limits of the "United States."

Again, *there is not in any other part of the Constitution*,

a single phrase or expression, which intimates or supposes the future probable or possible admission into the Union of the territory of any foreign country. It is, indeed, wonderful, if such a power was contemplated, that no conditions or limitations should be found in relation to its exercise. The very section before quoted, and which is supposed to include this power, contains provisions which have something like the effect of an enumeration of its objects. Reservations in relation to the then territories of the "United States," and restrictions upon the exercise of this power as to the states, are carefully made, but there is no provision, reservation, or restriction as to the supposed authority to admit states created from foreign territories. Why this care and circumspection to guard the lesser power, and this total want of restraint as to the greater, except it be that this enlarged construction of the clause was not contemplated by those who made and sanctioned it? And their *intention* is the only question at issue.

The contemporaneous exposition of the constitution, by those great men, who were active at the time of its formation and adoption, are frequently to be relied on, as furnishing the true key to its interpretation. The Supreme Court have often had recourse to these explanations, and acknowledged and insisted upon the value and importance of their use. The question of the adoption of the constitution called into exercise, and arrayed on opposite sides, all the great minds of the country. There was hardly an express provision, or an implied power, which could be derived from it, that was not examined and discussed in all its relations and consequences. The opponents of the measure taxed their intellects (and they were not mean ones,) to the utmost to detect and lay

bare every hidden defect, every latent power, which might lead to abuse, and expose them to the odium of the conventions and the people. How happens it, that such a power as this was passed by them entirely without notice? They insisted strenuously *that the territory of the United States was too large, and unwieldy for such a government*;—why did they not object that it had within itself this power of unlimited extension? It could only be, because such a construction of the constitution, was not dreamed of.

Who can suppose that if this overwhelming authority, was believed to exist at the time, it should not have been treated of, or even glanced at, in any of the numerous essays and debates of the period, which have come down to us? Yet such, it is believed, is the fact. The *section* was often discussed, and with great minuteness, but it seems to have been taken for granted throughout, that the authority, which it conferred, was only to be exercised on objects within the territory of the United States; and it was left to future ingenuity to derive from it a power, which, at the time, seems never to have been suspected. This silence would, of itself, speak volumes on this subject, but there is also some positive testimony in the records of the times, that new states were only contemplated within the original limits of the United States. Thus Gen. Heath said, in the Massachusetts Convention, speaking on the article forbidding any action till 1808, as to the migration and importation of slaves,—It "is confined to the states now existing only. New states cannot claim it; congress, by the ordinance for erecting new states some time since, declared that *the new states* shall be republican, and that there shall be no slavery in them."

But, again, such a construction is inconsistent with the

compromise, under which the Constitution was adopted, and which entered largely into its provisions. Many conflicting interests were reconciled, and the relative privileges, and powers of all were adjusted, in reference to the existing state of things, and in part undoubtedly in reference to the extent of territory, and probable population, represented by different interests. The reason for this would be destroyed, if there were a liability to change the relative weight, and influence of different sections, and thus create a new division of power, by the addition of states, not contemplated at the time, upon mere motives of general policy. A provision was inserted for instance, which would give the slave states larger power and influence than the northern, in proportion to the free inhabitants of each, not from any inherent propriety in the rule itself, but undoubtedly among other reasons, because the slave states were in the minority, and looking to the territory of the United States only, always must be in a minority; and they demanded something, which would answer as a protection for their peculiar interests. Would our fathers have consented to this, if it had been contemplated, that states without the then United States, might be admitted to participate in our government, and thus entirely destroy the balance which it was intended to create, so that (as would be the case should Texas be incorporated into the Union,) the unequal privilege, which was given to protect the weak, should at last, be used to make the power of the strong more irresistible? The committee do not here speak of the injustice of this effect, though it would be flagrant, but they allude to it to show the improbability that such a principle as they are contending against, which would disturb all the harmony and relation of its parts, should have been intentionally inserted

into the constitution, or contemplated by its founders, and especially that it should have been assented to by the people of the North.

There is another argument against the existence of this power, which the committee will dispose of in this connexion. It is derived from its *unreasonable and dangerous character.* It would indeed be in any view a power of monstrous extent, peculiarly unsuited to a confederated republic, and which a wise people would hardly have delegated. We have seen that by its influence, all the guards, and checks, and balances of the constitution affecting the relative weight and influence of the different portions of the Union, may be destroyed; it could make new distributions of power, according to the circumstances of the time, and mar all the harmony of the system. It could break down all right in the minority to choose their own political associations. It would have too, in its connexion with the war power, no limits, but we should be liable, by its exercise, to have our destinies fixed with those of any other people on this, or the other continent, with whom the interests of, it may be, an accidental majority, or the vacillating policy of the government might choose to unite us.

Even then, if other considerations still left the question in doubt, and it be a sound rule of construction, that "where the intention of words is doubtful, we should give them that effect which is most reasonable" in reference to the consequences (1 Story, 384, Vattel, book 2, ch. 17, § .) this argument would come in here with a controlling influence.

But it will be said, undoubtedly, that this question has been settled, and so settled, that it ought not now to be considered an open one. This suggestion will, of course,

hardly be made by that class of statesmen, who reject all precedent; who will not listen to judicial interpretations or any practical constructions of other branches of the government, or even contemporaneous explanation, as of the slightest consequence; and who maintain the unconstitutionality of the tariff, of internal improvements, and of the United States Bank, just as stoutly and unceasingly as if their doctrines had not been a thousand times overruled in the legislative action and judicial decisions of the country. But your committee are not of this faith. They admit the value of precedent; and when the acts relied on, in this view, are often repeated, were well and calmly considered, and adopted in reference to the question of constitutional power, and intended, in good faith, to affirm it, they furnish evidence, often high evidence, of its existence. But when the practice relied on wants these elements—when especially the great one, which is founded on a confidence in the opinion of those men who adopted it, is destroyed, by a knowledge that their real opinions were in exact contrast with that which is derived from their actions, then indeed is precedent worthless, for it wants the living principle, which alone can give it authority.

The acquisition of the territory of Louisiana, was the great measure of Jefferson, and has been looked upon as the crowning glory of his administration. The question as to the power of Congress to admit its inhabitants into the Union, arose at the making of the treaty, and the discussions, which grew out of its adoption, for it contained an express stipulation that the people of that territory should be admitted to the enjoyment of the rights, and privileges, and powers of citizens of the United States. The posthumous publication of his writings, has

fully disclosed, that Jefferson himself believed, as did many others who acted with him, that his own acts, in making this stipulation, and consenting to its execution, were not authorized by the constitution, but that they implied the exercise of a power forbidden by its spirit, and which could only be justified by the extreme and splendid importance of the acquisition, and made binding by the probable acquiescence, and silent confirmation of the people.

That there may be no mistake upon this point, we quote his own language.

"When I consider, that the limits of the United States are precisely fixed by the treaty of 1783—that the constitution expressly declares itself to be made 'for the United States,' I cannot help believing that the intention was not to permit Congress to admit into the Union new States, which should be formed without the territory for which, and under whose authority alone, they were then acting." (4 Jefferson, 2.)

Again. "The constitution has made no provision for our holding foreign territory, *still less for incorporating foreign nations into our Union.*" (3 Jefferson, 512.)

There was no change of his opinions throughout, and he consented to the measure only because he thought the exigencies of the times, and the objects to be gained were sufficient to sanction it, and gain for it the ratification of the people—in his own language, "confiding that the good sense of the country, will correct the evil of construction, when it shall produce ill effects."

The adoption of the treaty, with this stipulation, and the measures taken to carry it into effect in the administration of Jefferson, contain the whole force of the precedent, for, although the states embraced in the territory

were subsequently admitted, yet this was based upon these proceedings, being merely in performance of the stipulation, which Jefferson had made, both houses of Congress confirmed, and the people, acting probably from the same motives, acquiesced in.

The committee cannot think that a precedent thus established, ought to have any binding force upon future interpretations of the constitution. They do not mean, that the states, thus admitted without the territory of the United States, are not now rightfully in the Union. The *people* of the other states undoubtedly had a right to confirm these acts of their government, and probably by their silent acquiescence and their active participation with these new states in the exercise of the powers of the Union, they would be held to have sanctioned their admission.

It seems to have been supposed in very many of the discussions upon this subject, and particularly in the able report to the Ohio Legislature, which accompanied the resolutions before referred to, that the power exercised in the case of Louisiana, and that which is proposed to be exerted in the admission of Texas, are precisely analogous, and that if the rightful authority of the first be established, the other must follow as a necessary consequence. Your committee have already intimated that they are not of this opinion. If it were clear that the acquisition and admission of Louisiana were but the exercise of the legitimate powers of the government, this would by no means authorize the conclusion, of its authority to effect the *union* of our country with that of Texas. The two questions are distinct in their character, and depend upon entirely different principles. The latter supposes the annexation of *a foreign independent*

nation, and the consequent meeting and amalgamation of two sovereignties, or the merging of one in the other; while the former implies only the power of purchasing of another nation, *not itself, but its dependency and property*, and the admission of that, after it had become the territory of the United States, into the Union. This distinction is one not of form, but of substance. In the negotiations on the subject between Gen. Hunt, the Texan Minister, and Mr. Forsyth, the Secretary of State, both gentlemen seem to have been fully aware, that the measure proposed was one of *new impression*, and not justified by any example in our history; and the minister seems to have had an embarrassing sense that it had no precedent in the exercise of the *peace* powers of any government on earth. After making the proposition *in words*, to which, in whatever form brought forward, it must be reduced *in substance*, to wit, "*to unite the two people under one and the same government*," he proceeds:—"Numerous examples of the *amalgamation of sovereignties*, may be found in the history of nations, but *force, and not mutual affection and interest*, has been the general inducement to the formation of such bonds, *and it is, perhaps, impossible to find in the annals of any age a complete precedent of the one under consideration.*"

The answer of Mr. Forsyth expressly recognizes the distinction before taken. He says, "The question of the annexation of a foreign independent state to the United States has never before been presented to this government." After reviewing the history of the proceedings as to Louisiana and Florida, he continues,—"*The circumstance however of their being colonial possessions of France and Spain, and therefore dependent on the metropolitan government, renders these transactions materially*

different from that which would be presented by the question of the annexation of Texas."

The committee do not believe that any power exists in any branch of this government, or in all of them united, to consent to such a union, nor indeed does such authority pertain, as an incident of sovereignty or otherwise, to the goverment, however absolute, of any nation. It can only be rightfully effected, by a resort to the *summd jus populi*, the supreme law, which is vested in the people.

But before considering the authority of the law of nations upon this subject, or rather in order to its consideration, let us see in what form would be the practical exercise of this supposed power. In what department does it lie? Or, if it requires the combined authority of more than one, how is the first step to be taken?

If the treaty-making power, as in the case of Louisiana, is *first* to be exercised for the acquisition of the territory of Texas, or exercised *at all* in reference to the effect, how is it to be made available? The provision of the constitution upon this subject, is in these words. "He, (the president,) shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur." (Act 2, sec. 2, clause 2.) The constitution contains, nowhere, a definition of this power, and we must look for its nature and limits, therefore, to the law of nations, except so far as it may be restrained by the other provisions of the constitution itself. For "a power given by the constitution cannot be construed to authorize a destruction of other powers given in the same instrument. It must be construed, therefore, in subordination to it, and cannot supersede or interfere with, any other of its fundamental provisions." (3 Story's Com., 355, 6.) Undoubtedly, having its existence under

the constitution, it must assume that form, which that instrument has imposed. In the language of George Nicholas, in the Virginia Debates,—and the same opinion was expressed by Mr. Madison and Gov. Randolph,—"They (the President and Senate) can make no treaty which shall be repugnant to the spirit of the constitution, or inconsistent with the delegated powers." It is needless to multiply authorities or reasons upon this proposition.

But, again, the treaty-making power has other limits imposed upon it by the law of nations. There are certain things which the treaty-making power nowhere is able to effect, because they belong inalienably to the *people*, and are not only not presumed to be, but cannot be, delegated by them to their *governments*. They embrace rights, which no sovereign can by treaty grant on the one hand, or acquire on the other.

Territory may often undoubtedly be affected by treaty. Among its legitimate subjects, unless restrained by the fundamental laws of the state, are the settlement of doubtful boundaries between nations—the sale and acquisition of territorial possessions and dependencies, which are reckoned the mere property of the Prince, but it is doubtful whether a part of the principal empire can thus be transferred, except it be *in extremis*, in time of war, and the whole territory of a nation, *which necessarily includes its sovereignty*, cannot be made the subject of this species of contract. No people ever did or can *grant* an authority to merge their lot with that of another; from the nature of things it must be retained by themselves. This was the opinion of Locke. "Every sovereignty," says Vattel, "is unalienable in its own nature." "If it" (a nation) "trust the public authority to a prince, even with the right of transmitting it into other hands, this can nev-

er be except by the express and unanimous consent of the citizens, with the right of really alienating or subjecting the state to another body politic." * * * "If some petty principalities have been considered as such (as alienable) it is because they were not true sovereignties." (Vattel B. 1. ch. 5. § 69.) And he speaks of the exceptions to this rule which occur in history, particularly in cases of what Grotius calls "patrimonial kingdoms," as abuses of power, not authorized by the law of nations.

Puffendorf says, "A prince (the sovereignty in a state) nath no manner of power to transfer or give away his kingdom by his own single authority, and his subjects are not at all obliged by such an act, if made." (B. 8, ch. 5, § 9.)

(See also 2 Ward's Law of Nations, 256.)

If, therefore, as is evident, the sale of the whole territory of a nation, is a disposition of its sovereignty, and this be not a subject of barter by *governments*, to be transferred by them, Texas cannot merge her existence in ours "so as to form an "incorporate union," by any act of less authority than that of the people themselves. Such a transfer cannot be made a subject of grant, nor, of course, of purchase. A contract of this kind is not only mutual, but supposes competent authority in two consenting *governments*. If that of Texas cannot convey ours for the same reasons cannot acquire, that, which is not in its nature the subject of the powers granted to either. These powers are from their nature cor-relative; and whether the result aimed at, is spoken of as the annexation of Texas to the United States, or the annexation of the United States to Texas, the substance and effect are the same. It is quite immaterial, too, in the *practical consequences*, whether we are directly *sold* to Texas, or

England, or France, or Russia, or, by admitting them to participate in the powers of our confederacy, are overwhelmed and lost in our comparative feebleness, and thus commit to their hands its future moulding and direction. It is no matter in what form this measure is proposed. It is, in fact, the union of two independent governments: or perhaps it should rather be said, the dissolution of both, and the formation of a new one, which, whether founded on the same or another written constitution, is, as to its identity, different from either. This can only be effected by the *summa jus*, the highest rights of reserved sovereignty. It must be the act of the people themselves, and not of their rulers or servants. Neither the strongest exercise of the executive or the legislative power, or that of any other department, or of all combined, is competent to authorize its establishment.

If, indeed, it were otherwise, it would be idle to talk of "reserved rights" and "limited powers." They would be phrases without meaning, and represent things without efficacy.

Other considerations have been connected with these constitutional questions, though the connexion is without any real affinity. It is said, that Texas is in fact within the territory purchased in 1803 by the United States of France—though it is admitted, at the same time, that, whatever claim she had by virtue of this purchase, was relinquished in her subsequent treaty with Spain. The argument is presented in the resolution of Mr. Preston, submitted to the United States Senate January 4th, 1838. We transcribe the whole, because emanating as it does, from that enlightened statesman, it contains, within itself, the best evidence of the inherent feebleness of the cause, to which he has lent his great influence and popularity.

"Whereas, the just and true boundary of the United States, under the treaty of Louisiana, extended on the southwest to the Rio Grande del Norte, which river continued to be the true boundary line until the territory west of the Sabine was surrendered to Spain by the treaty of 1819: And whereas, such surrender of a portion of the territory of the United States is of evil precedent, and questionable constitutionality: And whereas, many weighty considerations of policy make it expedient to re-establish the said true boundary, and to annex to the United States the territory occupied by the state of Texas, with the consent of the said state:

"*Be it therefore resolved*, That, with the consent of the said state previously had, and whenever it can be effected consistently with the public faith and treaty stipulations of the United States, it is desirable and expedient to re-annex the said territory to the United States."

It will be seen, that the only argument in the resolution in favor of this measure, is derived from the assertion, that Texas was once within the territory of the United States. The committee doubt as to the fact, and are totally at loss to see, how, if established, it would have any tendency towards the conclusion. It is certainly a strong presumption against such a claim, that although it was once made by Mr. Monroe, and Mr. Adams, his Secretary, they themselves, after investigation, had no confidence in its validity; and that France, from whom, if at all, we derived our title, had never pretended to it, but always admitted the right of Spain.

Your committee cannot here go into an inquiry as to this supposed *former* title in the United States; though they believe, that such an examination, independent of these

presumptions, would show it to be entirely without foundation. But of what consequence is this, if the United States formally relinquished her claim, whatever it might have been, in the treaty with Spain, by which she acquired the Floridas? If Texas is *now* a foreign country,—if it is not *now* within the limits of the United States,—of what consequence is it, what may have been the fact twenty years ago?

This resolution attempts to give the answer. The cession to Spain was of "*questionable constitutionality.*" But how? Is not the treaty-making power under our government, competent to settle a disputed boundary line? Nay, may it not sell a territory (not included in a state)? For if it cannot, then it is as clear that it cannot purchase one;—for the powers are placed on the same ground, in the law of nations, and there is certainly no more restraint in our fundamental law, on the exercise of the first, than the last. The result of Mr. Preston's reasoning would therefore be, that we never had any title to this territory, by our treaty with France, and thus he must end with the denial of the very assumption with which he started.

But, again, supposing his assumption of fact to be true, and that it is also true that the treaty with Spain was unconstitutional,—what then? How are we to avoid it? There is but one way, certainly, if there be any, and that is to disclaim the *whole contract.* If we take back Texas, we must give back Florida. We cannot resume our grant because it was unauthorized, and at the same time keep the consideration. The treaty must be void or valid as a whole. Does the resolution propose this course?—No! The conclusion is that we ought, "with the consent of Texas," to re-annex it to the United States.

But, if we purchase it, or acquire it again, by contract or otherwise, is this any avoidance of our treaty with Spain, or any testimony to our belief of its unconstitutionality? Is the evil of the "example" thus purged or destroyed? On the contrary, the very act supposes the validity of the treaty, and carries with it no evidence against its policy.

But it is useless to follow out this proposition, in the resolution, into all its consequences. Its parts have no principle of cohesion to unite them, but fall in pieces at the touch. And yet it is the ground, and the only ground, excepting a general assertion "*of policy*," contained in a well considered resolution for the annexation of Texas, deliberately proposed by one of the most eminent and able of its friends!

The committee remark again, that the annexation of Texas, *would not be consistent with the honor of this country in view of its relations with Mexico.*

In the present state of things, certainly, it would be a breach of public faith. Mr. Preston acknowledges this, in the cautious qualification of his resolution. It recommends that Taxes be annexed only when "it can be effected consistently with the public faith and treaty stipulations of the United States," confessing by implication, that by its present admission, this faith and these stipulations would be violated. Mr. Forsyth also acknowledges the conclusive nature of this objection, though he accompanies it with an intimation, which affords much evidence as to the policy, which the executive had marked out for itself upon this subject, and which its subsequent conduct has confirmed. In his letter to Gen. Hunt, before alluded to, he says—"So long as Texas shall remain at war, while the United States are at peace with her adversary, the proposition of the Texian minister plenipotentiary,

involves the question of war with that adversary. The United States are bound to Mexico by a treaty of amity and commerce, which will be scrupulously observed on their part, so long as it can be reasonably hoped that Mexico will perform her duties and respect our rights under it. The United States might justly be suspected of a disregard of the friendly purposes of the compact, if the overture of Gen. Hunt were to be even reserved for future consideration, as this would imply a disposition on our part to espouse the quarrel of Texas with Mexico; a disposition wholly at variance with the spirit of the treaty, with the uniform policy and obvious welfare of the United States."

But it must be unnecessary to quote authorities or admissions upon this point. If Texas becomes an integral part of the United States, our government, by the very act which makes her so, adopts her quarrel, and engages to fight her battles with Mexico. This would be in itself a violation of our faith, and the forfeiture of our honor.

But this is not all. What is this war which we should thus sanction and adopt? What are its objects, instruments, and character, that the United States should place upon it her seal of approbation? The committee will not here go into the history of the revolt of Texas. Abler hands have torn away the covering, by which its real features were concealed, and exposed it to the public view. Your committee believe, that in its origin and progress its real purposes had few elements of justice or dignity. It was a war, some of the objects of which, at least, were speculation, and the poor liberty of holding men in bondage; the wresting from Mexico of her public domain, and establishing again upon the soil, which her ordinances had made free, the curse of domestic slavery.

Not only was it prosecuted, in a great measure, for the benefit of citizens of the United States, but with their assistance and active co-operation. *The provisions and munitions for its army were sent from the United States*, and its ranks were filled by enlistments openly made within her borders. These proceedings were without concealment. They were open to public inspection, and were made the subjects of continual comment, and if they were not approved, they, at least, were uncontrolled by our government. The sensitiveness to the public honor, which more recent violations of neutrality on our northern frontier has awakened, was then in dishonorable repose. Now, when it is remembered in connexion with these facts, that it was the intention throughout of the fomentors and supporters of this revolt, finally to secure their objects, by an union of Texas with this country, in what light will the United States stand among the nations, if she consents to this consummation of their purposes? Would she not ratify these proceedings of her citizens, and make their acts hers by adoption? Could her conduct be viewed in any other light, or exhibit any different degree of wrong, than if she had *directly* made the possessions of a defenceless sister republic, the subjects of a wicked and indefensible robbery, for the worst of purposes? The open violation of a treaty would be as nothing in comparison with this complicated guilt.

It seems to be anticipated by Mr. Preston, that the treaty obligations of the United States with Mexico, will not long be an obstacle to the accomplishment of this annexation. These may indeed be removed, but the objection arising from the other circumstances, which have been spoken of in connexion with them, will remain. Mexico may be obliged to acknowledge the independence of Texas. She may be forced by the course of singular

diplomacy adopted by our government in its intercourse with her, (which reflects little honor upon our public functionaries,) into a war; she may, in the event, or even in fear of such a war, purchase peace by the relinquishment of Texas to the United States. But this forced outward consent, wrung from her weakness, will not alter our real position, or take one shade from the deep stain of our guilt. The acquisition of Texas would still have stamped upon it the character of a great public robbery, and blacken this page of our history forever.

But, considered independently of our relation with Mexico, what would be the effects of this annexation, *upon our national condition and character?*

Even they, who hold that the power exists, of uniting with us a foreign nation, must admit its dangerous tendency, and that it should be exercised only with the greatest caution, and where the national benefits to be derived from it are manifest. They were so in the case of Louisiana. We secured, by its acquisition, the undisturbed navigation of the Mississippi, and its outlet to the sea; and the territory, which came to us, with these advantages, was looked upon but as an incident. The great object was, not to extend our territory, but to secure, strengthen and benefit our existing possessions. But do any such reasons exist, to prompt us to this farther annexation? Texas, indeed, in its great extent, embraces lands of singular fertility. But we have enough already within our domain, to stimulate sufficiently for the present the spirit of speculation, and to supply, for its true purposes, the growth of many generations. The mere increase of territory, in itself, would be a curse and not a blessing. It would make our government yet more un-

wieldy—add to the already alarming extent of power and patronage in our executive—foster all our military interests—increase the occasions and bitterness of sectional strife and jealousy, and double all our principal dangers. But *this* annexation would be attended with many peculiar and positive disadvantages. It would add to our borders a long line of exposed and defenceless sea coast: greatly multiply the occasions and incentives of war: bring new and vast tribes of Indians within our territory, creating questions of difficulty and embarrassment between them and our government (till they should become, in their turn, the victims of its policy;) and necessarily require a great augmentation of our standing army. It would bring in its train other effects, operating upon the physical as well as moral strength and resources of this nation, which would be felt in all coming time.

If, then, this measure would not be of national advantage, why is it urged? The answer to this question is easy. The objects of this accession are not *national.* They are, besides those of which we have spoken, to promote and strengthen the "peculiar interests" of the South. This motive, strange as it may seem, is openly avowed by its friends. In their own language, "The south wish to have Texas admitted into the Union for two reasons. *First, to equalize the south with the north,* and *secondly, as a convenient and safe place, calculated, from its peculiarly good soil and salubrious climate, for a slave population.*"

There is, happily, no disguise upon this subject. The objects, thus distinctly announced, are boldly avowed by the southern papers, in the addresses of their statesmen to the people, and stand out in bold relief upon the published proceedings of their Legislatures. And it is a stik-

ing fact that the report to the House of Representatives of Mississippi, unanimously adopted by that body, urging the acquisition of Texas almost exclusively upon these grounds, was referred to, and inclosed by Gen. Hunt, the minister of Texas, in one of his communications to our Secretary of State.

It is difficult to meet such positions, founded solely upon sectional views, and urging the measure, not only at the expense of the interests of the North, but of the welfare and honor of the country, in that temper and spirit, which become the discussion of a question of such immense importance. But, although the argument would seem to carry its own refutation upon its face, the committee will yet briefly analyse it, that there may be no mistake as to its character. It consists, in form, of two parts, though it is difficult entirely to separate them. It is said then—

1. *That Texas ought to be admitted into the Union, because it will increase the relative power and weight of the Southern States in this confederacy.*

But ought the power of one portion of the country to be sacrificed for the *mere purpose* of increasing that of another? It may be, that there are cases, where such a result may rightfully occur in the security of a great common good, and laws, from their nature, must often scatter their benefits unequally,—but who can give to a measure, which has this inequality for its *object*,—which proposes deliberately the taking from one and the giving to the other, not as an incident merely, but as an *end*, any other character than that of gross and flagrant wrong?

But this is not the whole truth. At the time of the adoption of the Constitution, compromises were entered into

between the North and the South, the conditions of which would, by such a measure, be unreasonably violated. The committee have before spoken of these, in reference to the constitutionality of this measure. They again consider them, to exhibit its palpable injustice. The free states were then in a decided majority, and it was supposed that the admission of the new states, provided for by the ordinances of Congress, would increase this ascendency. It was for this reason, and in the belief then almost universally expressed, and, it is presumed, entertained, that slavery would nowhere within our boundaries be of long continuance, that the South exacted from the North concessions and guaranties for the protection of their peculiar institutions. Of these, the representation of three-fifths of their slaves in the House of Representatives, and the election of President, &c., is perhaps the most remarkable;—a representation founded upon no just general principle, and which can only be justified by the state of things, of which we have spoken.

Probably it was not imagined in that day, that the power thus granted, would ever number twenty-five representatives of Congress, and twenty-five electors, as it now does; a power, which has controlled almost every national election and public measure of the country for many years. The North does not complain of this, however, so long as the condition of things is not intentionally changed. She will fulfil her bond, though she did not anticipate the extent of its obligations. But when the proposition is directly made to destroy the balance of power, and still keep the equivalent which was given for it, it should be met throughout the free states with united and determined resistance. Out of the territory of Texas it is proposed to carve from six to eight states as large as Ken-

tucky, and still after acquiring this preponderance, the slave-holding states are to have the advantage of their unequal representation, of electors and members of Congress. What could be more odious, or involve a grosser violation of public faith, than such a result, brought about, not accidentally, but striven for and attained for its own sake?

If the constitutionality of such a measure were only doubtful upon the literal construction of the instrument, there can be no doubt that its accomplishment would violate its spirit, and at least dissolve every moral obligation which binds the north to the Union.

But even this consideration sinks into insignificance, when compared with the other object of this annexation, which proposes, secondly, *by an act of the national government, to extend and perpetuate the system of slavery.* It would, undoubtedly, by opening a new market, and greatly increasing the demand, for slaves, be of great pecuniary advantage to at least portions of the south, but it would be at the sacrifice of a higher principle than avarice, and a greater good than money. It is said in an address delivered at Frankfort, Ky. in 1828, by a gentleman of the highest standing, that, prior to the annexation of Louisiana, the price of an adult slave was about one hundred dollars. By the demand, created in the settlement of the new lands, the price was increased many fold.—Mr. Gholson remarked in the Virginia Legislature in 1832, that when the act of Louisiana was passed, forbidding the further importation of slaves, their price fell immediately *twenty-five* per cent. But he added, that "he believed the acquisition of Texas would raise their price fifty per cent. at least." A similar calculation was made by one of the judges of the supreme court in the last convention of that Commonwealth, and the same general opinion is widely diffused throughout the south. Here may be seen

the nature and degree of the interest, which demands the annexation of Texas. The result of the measure would be, to strengthen slavery where it exists, and to extend its curse, over a new and vast region, from which it has been banished by its legitimate government. It has been said, indeed, that the evil will not be increased by this measure, for while its sphere will be enlarged, the number of its subjects will remain the same. But this view overlooks not only the probable revival of the African trade, with all its horrors, which the extended coast of Texas will invite and cover from detection, and the direct incentives to an internal traffic, which will have many of its features, but also the laws of supply and demand, which, in their relation to population, are as undoubted as the axioms of mathematics. The effect is certain upon the welfare of our country, and the happiness of unborn millions. There was a period in our history, when such a measure would have found few open advocates; when the system of slavery was alike regarded with abhorrence throughout our country. How long ago is it, when none were found bold enough to defend slavery in the abstract? Till recently, southern as well as northern statesmen characterized it as in itself a system of oppression and wrong, irreconcilable with any notion of natural justice, and inflicting countless evils upon society, and any attempt to palliate it in its origin, as a solemn trifling with reason. But the guilt of its origin as it existed, they charged rightly upon others—and they only justified its continuance among themselves, by the imperious necessity, which had been imposed upon them by their peculiar condition, and because, as they alleged, its sudden and violent removal, interwoven as it was with the whole texture of society, would bring misery to the slaves and ruin to their masters. How can these former opinions of the

south be reconciled with the measure which is now urged by a large portion, at least, of her citizens?

A practice wrong in itself, if it can be excused from necessity, must at least be limited to that necessity; and whenever it exceeds these limits, it is crime. If the opinions of the south are changed upon this subject, as it is said they are, and she now looks upon that system as a good, which she once regarded as an almost unmitigated evil, then indeed may she consistently labor to increase its strength and extend its influences. But let her ask no aid, no consent of Massachusetts to such an enterprise! *Her* position, at least, is unchanged. It has only been strengthened by the lights of the age, and the testimony of other and distant nations. She stands now where she did at her birth, as a free State, and, with the blessing of God, she will stand there, erect and firm and undaunted to the last. She disclaims all right of political interference with the exclusive authority which belongs to the several States, over the subject of slavery within their respective limits; and all constitutional guaranties, however incautiously entered into, she will "fulfil in the fulness of their spirit, and to the exactness of their letter." But, when her assistance or acquiescence is asked, to a national act, for the purpose of giving to slavery new life and vigor and extension, if she did not unhesitatingly and indignantly reject the proffer, she would indeed be unworthy of her origin, and forgetful or regardless of the great and peculiar glory of her history.

If the revival of the African slave-trade were not the consequence of this act, would not almost every element of its guilt be united in it, and stand out upon the annals of the United States a lasting testimony to its inconsistency, hypocrisy, and crime? In the language of Mr.

Webster, on the Missouri question, which is applicable with ten-fold force at this time, and to this occasion. What is it, thus to extend the evils of slavery to a new country, "but to encourage that rapacity, and fraud, and violence, against which we have so long pointed the denunciations of our penal code? What is it but to tarnish the proud fame of the country? What is it but to throw suspicion on its good faith, and render questionable all its professions of regard for the rights of humanity, and the liberty of mankind?"

Your committee therefore propose to the Legislature, the adoption of the accompanying resolutions, protesting against the annexation of Texas to this Union. They believe, that this question is fraught with consequences which can hardly be over estimated, involving, indeed, the future destiny of this republic, and with it the welfare and happiness of millions; and that the day on which it shall be decided, will be the most eventful day in our history.

Massachusetts then, should arouse all her energies for the contest; so that, if in the end the wrong shall prevail, "and the worst come, that can come, she may have the satisfaction to know that she has discharged her duty," and that no responsibility for the event, can be charged upon her action on the one side, or her apathy on the other.

All which is respectfully submitted.

For the Committee,

JAMES C. ALVORD, *Chairman.*

Commonwealth of Massachusetts.

RESOLVES

Against the Annexation of Texas to the United States.

Whereas a proposition to admit into the United States, as a constituent member thereof, the foreign nation of Texas, has been recommended by the legislative resolutions of several States, and brought before Congress for its approval and sanction: and whereas such a measure would involve great wrong to Mexico, and otherwise be of evil precedent, injurious to the interests, and dishonorable to the character of this country; and whereas its "avowed objects are doubly fraught with peril to the prosperity and permanency of this Union," as tending to disturb and destroy the conditions of those compromises and concessions, entered into at the formation of the Constitution, by which the relative weight of different sections and interests were adjusted,—and to strengthen and extend the evils of a system, which is unjust in itself, in striking contrast with the theory of our institutions, and condemned by the moral sentiment of mankind: and whereas the people of these United States have not granted to any or all of the departments of their government, but have retained in themselves, the only power adequate to the admission of a foreign nation into this confederacy:—therefore

Resolved, That we the Senate and House of Representatives, in General Court assembled, do, in the name of the people of Massachusetts, earnestly and solemnly protest against the annexation of Texas to this Union, and declare that no act done, or compact made, for such purpose, by the government of the United States, will be binding on the States, or the People.

Resolved, That his Excellency the Governor be requested, to forward a copy of these Resolves to each of our Senators and Representatives in Congress, and to each of the Executives of the several States.