SPEECH

OF

HON. SAMUEL S. COX, OF OHIO,

ON THE

PRESIDENT'S MESSAGE.

DELIVERED IN THE HOUSE OF REPRESENTATIVES, DECEMBER 16, 1857.

Mr. SMITH, of Tennessee, from the Committee on Printing, having reported in favor of printing twenty thousand extra copies of the President's Message and accompanying documents, and moved the previous question thereon—Mr. COX said:

I ask the gentleman from Tennessee to withdraw the call for the previous question, that I may have the privilege of addressing the House for a few moments on this matter of the President's message.

Mr. SMITH, of Tennessee. Very well; if it be only for a moment I have no objection.

Mr. COX. I do not wish, on the present occasion, to detain the House with regard to the general business of this country; but there are some matters connected with the President's message about which I would like to say a few words on the motion which is before the House.

Mr. BOCOCK. I rise to a question of order. The gentleman has no right to go into a general discussion upon the motion which has been submitted by the gentleman from Tennessee.

The SPEAKER. It is not in order for the gentleman to discuss the President's message.

Mr. COX. I think I can bring my remarks within the rule of order.

Mr. MARSHALL, of Kentucky. Do I understand the Chair to decide that a motion to print is not debatable?

The SPEAKER. The Chair is of opinion, upon further consideration, that the motion opens up the whole question to debate.

Mr. COX. Then I wish to say that, while I concur most heartily in the message of the President in almost every particular—

Mr. HUGHES. I rise to a question of order. I shall, for one, object to this general farming out of the floor in this House by the withdrawal of the demand for the previous question, upon condition that it shall be renewed by the member for whose benefit it is withdrawn. But if the practice is to be kept up, if such bargains are to be tolerated, then I insist that the contract shall be strictly executed. Now, the gentleman from Ohio [Mr. COX] appealed to the gentleman from Tennessee [Mr. SMITH] to withdraw the demand for the previous question. The gentleman from Tennessee, if I understood him correctly, consented to do so on the condition that the gentleman from Ohio should renew the demand after occupying the floor for a moment. Now, if that is the contract between the two parties, and the House intend to tolerate such contracts, my point of order is, that these contracts shall be strictly executed; and that, under the contract entered into by the gentleman from Ohio, he shall not be permitted to enter into a general discussion upon the merits of the President's message.

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The SPEAKER. The Chair can recognize no contracts between members of the House in respect to the occupation of the floor.

Mr. COX. Mr. Speaker, I need not say how heartily I concur with the message of the President, in almost every regard. Upon the questions of finance he shows a far-sighted economy, which will find its ready approbation in the judgment of the country. In relation to that "twin relic of barbarism"—Utah—he deals with its enormities in such a way as to give earnest of a policy which will assert the supremacy of decency and civilization, while the supreme power of the Republic will be vindicated. In our foreign affairs, in which his tact and statesmanship have been so conspicuously exercised at home and abroad, he may still be proclaimed the great pacificator. That policy of peace under which our nation has thriven beyond all the marvels of time, is still uppermost in his desires.

Mr. QUITNAM. I call the gentleman to order. My point of order is, that the gentleman cannot discuss the merits of the message on a motion to print.

The SPEAKER. The Chair is of opinion that the motion to print opens the merits of the President's message.

Mr. JONES, of Tennessee. I would suggest another point of order. This is not a motion to print the message. The House has heretofore made the order to print. This is merely a question to print extra copies. It is true that a simple motion to print opens up the merits of the document itself, but a motion to print extra copies of a message which has already been ordered to be printed, does not open to debate the merits of the message itself. The massage is not before the House. It has been referred to the Committee of the Whole on the state of the Union, and is not in the possession of the House.

The SPEAKER. The Chair overrules the question of order made by the gentleman from Tennessee. The Chair is of opinion that the motion to print extra copies opens the whole message for debate. The House may be governed by the sentiments which the message contains in the number of copies, whether larger or smaller, which it may order to be printed. Debate is in order.

Mr. COX. So dear to his heart is the peace of the country, that the President is ready to make great sacrifices to preserve it, not alone abroad, but in our home relations—not alone between the States, but between the people of the States and between the pioneers upon our borders. Herein is to be found the solution of that part of his message with reference to Kansas.

While the President lays down his general principle of submitting the whole constitution to the people, he subordinates the question to that of peace. He thinks it right to stand by the principle, but inexpedient to do so in the present aspect of affairs in Kansas.

But in my judgment, there will be no peace from this admission of Kansas under the Lecompton constitution. Expediency is a dangerous doctrine, when in collision with principles. There can be no peace to that people while their rights are jeopardied. Certainly none in that ill-starred Territory, if the attempt to gain partisan ascendency there, be founded in stratagem and fraud. If every question of difference be not honestly submitted to the whole people and decided without restraint or hindrance—no other device can be framed which will insure quiet. If there be treachery, there will be civil war. If there be a Judas, there will be an Aceldama. Kansas will be that field of blood.

But whether there be peace or not, I would not sacrifice the principle involved herein for any peace that can be purchased.

That principle is stated by Mr. Buchanan in his message, thus:

"Under the earlier practice of Government, no constitution framed by the convention of a Territory, preparatory to its admission into the Union as a State, had

been submitted to the people. I trust, however, the example set by the last Congress, requiring that the constitution of Minnesota 'should be subject to the approval and ratification of the people of the proposed State,' may be followed on future occasions. I took it for granted that the convention of Kansas would act in accordance with this example, founded, as it is, on correct principle; and hence my instructions to Governor Walker, in favor of submitting the constitution to the people, were expressed in general and unqualified terms."

It receives his sanction as a principle, though he cannot now recommend its application, *ex post facto*, with reference to Kansas. He hopes it may be hereafter adopted universally. I agree with him—and the whole Democracy of the nation agree with him on this last proposition. Because I may insist on its application to Kansas even yet, it does not follow that I am indifferent, much less unfriendly, to the success of this Administration.

True, the President, in his message, has expressed his opinion that the "*question has been fairly and explicitly referred to the people whether they will have a constitution with or without slavery.*" He has instituted an argument in favor of the legality of the Lecompton constitution; while he also expresses his unabated faith in the wisdom of the general principle of submitting the whole constitution. But he takes care to avoid any recommendation to Congress. Our action is unimpeded by party fealty. If it were thus impeded, if the President had recommended a different course, I should not hesitate to say that, as Congress has the exclusive right to admit States, I should pursue the obligations of my sworn duty. The Administration is the trustee of the party, within its own sphere of duty. In this sphere it is entitled to our confidence. It shall receive my wholehearted support. But as to the question in my own sphere, I may be allowed to represent my people. I am not of the opinion of the old theologians, that a man must be willing to be eternally damned for an imputed sin, before he can be saved. In thus deciding, conscience, honor, pledges, and constituency, all compel me to stand to the Democratic policy—which is the submission of the whole constitution to the people.

This Administration was called into being by virtue of this principle.

This Democratic majority is due to the ascendency of this principle.

You, Mr. Speaker, owe your high place to the fidelity of those who sustained that principle.

That principle has a history, written in an agitation unsurpassed by any bloodless political contest of the world—at least since the repeal of the corn laws in 1846, or the French revolution of 1848.

It began in 1850, when the wisest of our statesmen framed the compromises of that year. It had its precedents before that year. But it was not based on precedents. It was above all precedents, settlements, or compromises. With its virtue, the Kansas and Nebraska act was inspired. That act struck down the Missouri restriction; which was as odious to the South as it was antagonistic to the Constitution. Minnesota has since received an enabling act upon this same principle. It was framed by the same Senator who framed the act of Kansas and Nebraska; and whose authority, next to the act itself, is more binding as to its true intent and meaning than that of any other man in the land.

When the unreasoning crusade was made against it in 1854—when it was denounced as a swindle by those who seem now so anxious for its establishment—when its author was made the synonym for traitor in the Republican lexicon—then it was that the Democratic party pledged themselves to abide by the decision of the people as to all their domestic institutions when they sought to become States.

This is the right line of policy, for it is the right line of principle. "As in geometry, so in government—the shortest, easiest, and best way from point to point is the right line."

I mean, in this argument, to pursue that line. Any policy that does not

stand squarely to it comes in "such a questionable shape that I will speak to it."

In pursuance of that line, I claim the right now to place myself and my constituency unequivocally in the position of protestants against any doctrine which would seem to approve of the conduct of the constitutional convention in Kansas.

I do not propose now to argue at length. I propose now only to nail against the door, at the threshold of this Congress, my theses. When the proper time comes, I will defend them, whether from the assaults of political friend or foe. I would fain be silent, sir, here and now. But silence, which is said to be as "harmless as a rose's breath," may be as perilous as the pestilence. This peril comes from the attempt to forego the capital principle of Democratic policy, which I think has been done by the constitutional convention of Kansas.

I maintain:

1. That the highest refinement and greatest utility of Democratic policy—the genius of our institutions—is the right of self-government.

2. That this self-government means the will of the majority, legally—if you please, legally expressed.

3. That this self-government and majority rule were sacredly guarantied in the organic act of Kansas.

4. That it was guarantied upon the question of slavery in terms; and generally with respect to all the domestic institutions of the people.

5. That domestic institutions mean all which are "local, not national—State, not Federal." It means that and that only—that always.

6. That the people were to be left perfectly free to establish or abolish slavery, as well as to form and regulate their other institutions.

7. That the doctrine was recognized in every part of the Confederacy by the Democracy; fixed in their national platform; asserted by their speakers and presses; reiterated by their candidates; incorporated in messages and instructions; and formed the feature which distinguished the Democracy from its opponents, who maintained the doctrine of congressional intervention.

The proof of this seventh proposition is everywhere of record.

1. Cincinnati platform.

At the Democratic National Convention, held in June, 1856, when Mr. Buchanan was nominated for the Presidency, the following solemn declaration was unanimously made:

"*Resolved*, That we recognize the right of the people of all the Territories, including Kansas and Nebraska, acting through the fairly expressed (not implied) will of the majority of actual residents, and whenever the number of their inhabitants justifies it, to form a constitution, with or without domestic slavery, and be admitted into the Union upon terms of perfect equality with the other States."

2. The President's inaugural.

Mr. Buchanan, in accepting the nomination, guided his administration by the resolve of the Cincinnati Convention. In his inaugural address he referred to this matter, and thus expressed himself:

"What a conception, then, was it for Congress to apply this simple rule—that the will of the majority shall govern—to the settlement of the question of domestic slavery in the Territories!"

And in the same address, the President, after referring to the question of the time of admission of a State as unimportant, uses this emphatic language:

"This is, happily, a matter of but little practical importance. Besides, it is a judicial question, which legitimately belongs to the Supreme Court of the United States, before whom it is now pending, and will, it is understood, be speedily and finally settled. To their decision, in common with all good citizens, I shall cheerfully submit, whatever this may be, though it has ever been my individual opinion that, under the Nebraska-Kansas act, the appropriate period will be when the number of

actual residents in the Territory shall justify the formation of a constitution with a view to its admission as a State into the Union. But be this as it may, it is the imperative and indispensable duty of the Government of the United States to secure to every resident inhabitant the free and independent expression of his opinion by his vote. This sacred right of each individual must be preserved!"

3. Governor Walker's acceptance and address.

Mr. Buchanan, shortly after coming into power, found Kansas without a Governor; he took time to select a good man for the post. He tendered it to Hon. R. J. Walker, who declined it. He again tendered the office to the same gentleman, who at last, on the 30th March, after frequent conversations with the President, accepted the post. In accepting the office, he did so after thus addressing the President in writing:

"I understand that you and your Cabinet cordially concur in the opinion expressed by me, that the actual *bona fide* residents of the Territory of Kansas, by a fair and regular vote, unaffected by fraud or violence, must be permitted, in adopting their State constitution, to decide for themselves what shall be their social institutions. This is the great fundamental principle of the act of Congress organizing that Territory, affirmed by the Supreme Court of the United States, and is in accordance with the views uniformly expressed by me throughout my public career. I contemplate a peaceful solution of this question by an appeal to the intelligence and patriotism of the people of Kansas, who should all participate freely and fully in this decision, and by a majority of whose votes the decision must be made, as the only and constitutional mode of adjustment.

"I will go, then, and endeavor to adjust these difficulties, in the full confidence, as expressed by you, that I will be sustained by all your own high authority, with the cordial co-operation of all your Cabinet."

Was there any complaint when Governor Walker thus accepted this post of trouble and responsibility? Who thought the conditions of his acceptance illegal, or in violation of usage or principle? Was the President's action hailed with denunciation, or with acclamation?

Meanwhile, the President addresses the clergy of Connecticut to the same purport.

4. Mr. Buchanan to the clergy.

In Mr. Buchanan's letter to the Connecticut clergymen he thus defines his motives, and justifies his action in sending troops to Kansas:

"The convention will soon assemble to perform the solemn duty of framing a constitution for themselves and their posterity: and, in the state of incipient rebellion which still exists in Kansas, it is my imperative duty to employ the troops of the United States, should this become necessary in defending the convention against violence while framing the constitution, and in protecting the '*bona fide* inhabitants' qualified to vote under the provisions of this instrument, in the free exercise of the right of suffrage, when it shall be submitted to them for approbation or rejection."

Still, anxious and fearful, the President sent after the Governor written instructions, which leave no doubt as to his integrity and determination to make good his inaugural, his instructions given personally, and his letter to the clergy. Here is the most pointed part of those instructions:

5. Instructions to Governor Walker:

"The institutions of Kansas should be established by the votes of the people of Kansas, unawed and uninterrupted by force and fraud.

"The regular legislature of the Territory having authorized the assembling of a convention to frame a constitution, to be accepted or rejected by Congress, under the provisions of the Federal Constitution, the people of Kansas have the right to be protected in the peaceful election of delegates for such a purpose, under such authority; and the convention itself has a right to similar protection in the opportunity for tranquil and undisturbed deliberations. When such a constitution shall be submitted to the people of the Territory, they must be protected in the exercise of their right to vote for or against the instrument, and the fair expression of the popular will must not be interrupted by fraud or violence."

This was what the country, including the people of Kansas, had a right to expect. But, as if to put it beyond all doubt, Governor Walker gave to those most nearly interested—the people of Kansas—his renewed assurance of the mode in which their constitution should be adopted.

6. Governor Walker's inaugural.

How did Governor Walker and the country understand these exprssions of the President and the official act of the Administration? Governor Walker, upon his arrival in the Territory, in his inaugural address, thus expressed his views and the views of those who sent him there. The language is absolutely prophetic. He said:

"Is it not infinitely better that slavery should be abolished or established in Kansas, rather than that we should become slaves, and not be permitted to govern ourselves? Is the absence or existence of slavery in Kansas paramount to the great question of State sovereignty, self-government, and of the Union?" * * * *

"If patriotism, if devotion to the Constitution, and love of the Union, should not induce the minority to yield to the majority on this question, let them reflect that, in no event, can the minority successfully determine the question permanently; and in no contingency will Congress admit Kansas as a slave or as a free State, unless a majority of the people of Kansas shall first fairly and freely decide the question for themselves *by a direct vote on the adoption of the constitution*, excluding all fraud or violence.

"The minority, in resisting the will of the majority, may involve Kansas again in civil war; they may bring upon her reproach and obloquy, and destroy her progress and prosperity; they may keep her for years out of the Union, and, in the whirlwind of agitation, sweep away the Government itself; but Kansas never can be brought into the Union, with or without slavery, except by a previous solemn decision, *fully, freely, and fairly made by a majority of her people, in voting for or against the adoption of the State constitution.*"

Now, it must not be forgotten that, under these repeated assurances—endorsed by the press of this city, of Virginia, of the North, the West, and the East—the constitutional convention was called into being in February. In June the delegates were voted for. The leading spirits in that convention were the delegates from Douglas county, led by Calhoun, whose tactics and chicanery seem to give character to the proceedings. These delegates were questioned by the Democracy as to this policy. They gave this reply:

7. Calhoun's pledges.

"*To the Democratic voters of Douglas connty*:

"It having been stated by that Abolition newspaper, the *Herald of Freedom*, and by some disaffected bogus Democrats, who have got up an independent ticket, for the purpose of securing the vote of the Black Republicans, that the regular nominees of the Democratic convention were opposed to submitting the constitution to the people, we, the candidates of the Democratic party, submit the following resolutions, which were adopted by the Democratic convention which placed us in nomination, and which we fully and heartily endorse, as a complete refutation of the slanders above referred to.

JOHN CALHOUN,	A. W. JONES,
W. S. WELLS,	H. BUTCHER,
L. S. BOLLING,	JOHM M. WALLACE,
WM. T. SPICELY.	L. A. PRATHER.

"LECOMPTON, Kansas Territory, *June* 13, 1857."

"*Resolved*, That we will support no man as a delegate to the constitutional convention, whose duties it will be to frame the constitution of the future State of Kansas, and to mould the political institutions under which we, as a people, are to live, unless he pledges himself fully, freely, and without reservation, to use every honorable means to submit the same to every *bona fide* actual citizen of Kansas, at the proper time for the vote being taken upon the adoption by the people, in order that the said constitution may be adopted or rejected by the actual settlers in this Territory, as the majority of the voters shall decide."

Now it must not be forgotten again, that by this time, the slavery question was virtually settled in Kansas. The remaining question was that of self-government. It was white, not Black Republicanism. It was the complete subjugation of all interests to the popular will.

What, then, can equal in treachery the conduct of these Catalines of Kansas, who, under all these obligations of principle and honor, attempt to subjugate the popular will to *theirs?* Were these delegates angels, that they should intervene to despoil the people of their expected boon of free expression as to the institutions under whose protection their homes, their lands, their children, were to be panoplied? Better, far better, than this,

the intervention of this distant Congress, than that of the traitors within the very citadel of their rights!

Having thus shown the pledges of the Democracy to the people of Kansas, I affirm—

8. That to be found recreant to them now, when the practical test is upon us, would be a gross breach of faith, and a disgraceful desertion of duty, from which there is no escape from public condemnation.

9. That the approval of the Lecompton constitution, however the result of the election of the 21st of December next may eventuate, whether there be a slave State or a free State, involves this breach of faith and desertion of duty: because,

First. That constitution, while it is asserted that it is submitted to the people in the essential point, thus recognizing an obligation to submit it in some mode, cannot, in any event, be rejected by the people of Kansas. The vote must be for its approval, whether the voter votes one way or another. The people may be unwilling to take either of the propositions, and yet must vote one or the other of them. They have to vote "constitution with slavery," or "constitution with no slavery;" but the constitution they must take. They have no business with the constitution; slavery they may dabble in. With that they are graciously permitted to meddle. But as for their organic law, "hands off, ye plebians; your touch is unholy!" They come to exercise their will at the polls. They find a clenched fist on either hand. No open palm, unless first they give up their franchise as to the constitution. Then, oh! then, they may be permitted to vote on one subject only. Is there a Democrat here who would stand that? If there is, he ought to go West and learn a little of the character of these independent men of the border.

A scheme like this, to submit a part of the constitution, while it pretends to submit all, is a device so thin as to have no upper nor under side. It is so transparent that its statement is its badge of fraud. It is an attempt to carry out a salutary principle, in part, which was established in its entirety. It is worse. It compels the voter to swear to support a constitution before he can vote to kill it; and then he is not allowed to strangle it. It is an attempt, by a pretended submission in part, to carry the idea of a total submission; and thus *force an unsubmitted constitution on an unwilling people.*

If that convention could legally submit one question, and withhold all others, they can reserve that one question, or all! The submission of one clause, be it slavery or banks, judiciary or taxation, liquor or legislature, is an argument against the reservation of any other; and, of course, against all others. This juggle will not do. It is too nice to be honest.

Again: take this slavery question, and observe how the mystigogue and demagogue have combined to cheat the people. The constitution has a slavery article, (VII.) It recognizes in its first section the right of property in slaves and their increase. In the second section, it permits emancipation by the Legislature on payment to the owners of "*a full equivalent in money for the slaves so emancipated.*" The emancipation and slavery clause are bound together in the same article.

Now turn to the schedule! Suppose the constitution with slavery is voted: then slavery and emancipation remain as in the seventh article. But suppose "constitution with no slavery" is carried: what then? The seventh article shall be stricken out; slavery and emancipation go out together; but the right of property in slaves now in the Territory shall not be interfered with! In other words, if Kansas be made a slave State, slaves can be introduced from abroad; and as fast as they come, the Legislature may emancipate. That is your slave State. If it be a free State, there can be no emancipation of slaves or their increase forever.

Now, will gentlemen tell me which would be the free State, which the

slave? This beautiful specimen of a constitution is not unlike certain animaculæ found by naturalists, where the two polypi may be made to change heads; for the head of one may be ingrafted on the body of another by placing the tail of the one in the mouth of the other. The two heterogeneous extremities will readily unite so as to confound all of our notions of identity.

How can you expect freemen to vote for such a schedule of chicanery? "Oh! if the free-State men would vote," say the politicians, "how it would release the Democracy from its dangerous dilemma." For my part, I will never go begging Republicans to sustain the standing and character of the party to which I am devoted. Follow the right line, and that party need not coax or wheedle to sustain its dignity and supremacy.

Second: There is not, *à priori*, by the election of delegates, a legal approval of the constitution. Although there were fifteen counties entitled to vote for delegates, for which there was no census or registry, which could not participate in the election, as Governor Walker proclaimed on September 16, 1857, yet it does not follow that the constitutional convention was an unlawful assemblage; nor does it follow, if it were lawful, that their constitution is to be void, without the popular suffrage in its favor.

This the people had here expressly reserved to them in the organic act—the confirming or dispensing power. The Territorial Legislature could not affect that organic act. The sovereignty in this case never departed from the people. It was not lodged in the convention. It was clearly understood, and universally expected, that it would be exercised by the people. The President expected it. He regrets the failure to submit it. Any attempt to abridge or take away this popular sovereignty is a fraud of so hideous a character, that language has no term of reproach, nor the mind any idea of detestation, adequate to express or conceive its iniquity.

If that sovereignty was lodged in the convention, who lodged it there? 1st. Did Congress? No; for the act does not provide for the calling of a convention, or the formation of a constitution. There has been no legislation by Congress on the subject.

On the contrary, Congress, by rejecting Mr. TOOMBS' bill, refused thus to initiate such proceedings.

2d. Did the Territorial Legislature? If Congress could not do it, it could not. It was the creature of Congress—of the organic act. It could not do what the organic act, under which it lived, did not authorize. The creature could not do what the creator refused to permit to be done. What authority had this convention? If it had none from Congress, could it be claimed that the Territorial Legislature had an authority from the people to call this convention? Unless that be expressly shown, it will not be implied. If it be not expressly shown, that sovereignty was reserved to the people. The Territorial Legislature derived its powers from the act creating it. Those powers are defined, and but generally defined, in the twenty-fourth section:

"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."

In no part of the act is there any express power to call a convention to frame a constitution. Who will say that such a power can be implied? Such a power dissolves the territorial government. Its own death by suicide cannot be within the purview of the Territorial Legislature. If it can compass its own death, it can kill the power of Congress which called it into being.

This is in accordance with right reason. It is in accordance, too, with precedent. I am not one of those who swear in the words of any master. Precedents depend for their force on their intrinsic worth. Precedents serve only to illustrate principles, and to give them a fixed authority. Prin-

ciples are the result of reason. "Authority is a long bow, the effect of which depends upon the strength of the arm which draws it, and reason is a cross-bow of equal efficacy (if well directed) in the hands of a dwarf or a giant."

Authority and reason unite to declare that no Territorial Legislature has the power to call a constitutional convention. It cannot override the organic law, any more than it can destroy the Constitution of the Union. This is reasonable. It does not depend on the strength of him who utters it; but authority does. We have that authority from statesmen of such conspicuous greatness that no one will question them—Thomas Jefferson, Andrew Jackson, and James Buchanan.

Jefferson always spoke of the first constitution of Virginia, adopted in 1776, as wanting the popular sanction. In 1824 he regarded the acquiescence of the people even as no supply for the want of original power from them. Here are his words:

"To our convention no special authority had been delegated by the people to form a permanent constitution, over which their successors in legislation should have no power of alteration. They had been elected for the ordinary purposes of legislation only, and at a time when the establishment of a new government had not been proposed nor contemplated. Although, therefore, they gave to this act the title of a constitution, yet it could be no more than an act of legislation, subject, as their other acts were, to alteration by their successors. It has been said, indeed, that the acquiescence of the people has supplied the want of original power. But it is a dangerous lesson to say to them, 'Whenever your functionaries exercise unlawful authority over you, if you did not go into actual resistance it will be deemed acquiescence and conformation.' Besides, no authority has yet decided whether the resistance must be instantaneous; when the right to resist ceases; or whether it has yet ceased. Of the twenty-four States now organized, twenty-three have disapproved our doctrine and example, and have deemed the formal authority of their people a necessary foundation for their constitution."

In the Arkansas case the question was fairly met by General Jackson's Attorney General, who decided that the Legislature could not act in the formation of a State government. In the Michigan case, Mr. Buchanan held, in 1835, that Legislatures "*had no right whatever to pass laws enabling the people to elect delegates to a convention for the purpose of forming a State constitution. It was an act of usurpation on their part.*"

If Jefferson, Jackson, and Buchanan were right, if reason is right, then where is the authority of this Lecompton convention?

It is said that precedents are found in Michigan and California. Ah! but in those cases there was no doubt as to the popular approbation. Irregularities and formalities may be disregarded when the popular voice gives the substance to the application. But in a case like this of Kansas, form is substance. When the voice of the people is ambiguous, or in doubt, or against the constitution, it is clear Congress should require a popular verdict before it should pass judgment. Even in Wisconsin, where Congress provided for a convention in March, 1847, it sent the constitution back to be submitted to the people. This was wise and constitutional. The people rejected the first constitution, made a second, and were admitted under it in May, 1848.

I need not here refer to the case of Minnesota, where, in the enabling act, provision is made for submission. I only refer to it now to show that the policy of this country is becoming fixed in that way. Our earlier constitutions were not submitted, as the President remarks; but lately the people are taking a deep interest in constitutional questions. They not only like to pass upon them, but it is their privilege to do so by that surest of all modes—the silent ballot. Wherever this is possible, no agent shall intervene between them and their will. That is Democracy! Its progress may be marked in the fact that twenty-one out of thirty-one of the present constitutions of these States have been submitted to the people. Here is the list:

States whose constitutions have been submitted to the people for ratification.*

States.	Date.		States.	Date.	
California	November 13	1849	Michigan	November 5	1850
Connecticut	October 5	1818	New Jersey	August 13	1844
Georgia	First Monday in October	1839	New York	November 2	1846
Illinois	March 7	1848	North Carolina	November 9	1835
Indiana	August 4	1851	Ohio	June 17	1851
Iowa	August 3	1846	Rhode Island	November 21, 22, 23	1842
Kentucky		1850	Tennessee	March	1835
Louisiana	November 2	1852	Texas	October 13	1855
Maine		1820	Virginia	October 23, 24, 25	1851
Maryland	June 4	1851	Wisconsin	April	1848
Massachusetts		1780			

States whose constitutions are not known to have been submitted to the people for ratification.

States.	Date.		States.	Date.	
Alabama		1819	Missouri	July 19	1820
Arkansas	January 4	1836	New Hampshire	September	1792
Delaware	December 2	1831	Pennsylvania		1838
Florida		1839	South Carolina		1790
Mississippi	October	1832	Vermont		1850

*The work of the latest constitutional convention in each State.

So much for precedents. The weight of them is in favor of the principle of submission.

It has been argued that the Lecompton convention was a legal body; but legal only as a petitioning body praying for a certain object. I cannot say that I have seen anything of a prayerful character about that body. Their ordinance about the public lands—as impudent as it is startling—does not seem to be in a prayerful mood. But be that as it may, suppose they are legal petitioners, I contend that that is not the proper mode for the formation of States. It might do if there were a popular sanction; otherwise, most certainly not.

But I will go further. I will admit just now, for the argument, that the convention had an authoritative existence; that the Territorial Legislature had power to convoke it; nay, more, that it has *prepared* a legal constitution; and yet I say it has no power to *adopt* it. That lies with the people, under the organic law. Oh, yes, gentlemen may say, is not the convention legal? If that, why not its product? If that be legal, is it not intervention to do aught save admit Kansas, under this contrivance, as an equal State. The convention may be legal. It may have all the forms of law. It may even be authorized by the organic act; and its action may be in accordance with authority and precedent; but still I say it lacks the life-giving spirit by which it can be made a State co-equal with my own—Ohio. It may be legal—may seem so. Its forms many be skillfully drawn. It may be as good in its general provisions as the President says it is. So you may see a languishing body have all its parts, and yet be useless for many purposes of life; you may reckon all the joints of a dead man; but the heart is cold, the joints stiff, the pulses still, and it is only fit for the grave. So with this constitution; it may be legal and formal, but until the popular breath is breathed into it, it is of no validity or force. It is worse; it is not only pulseless—heartless—but it is, through trickery and fraud, a mass of detestable putrescence. Without that popular confirmation, it will never, never be suffered to appear above ground. No scientific galvanism contained in that schedule can inform or vivify its decaying members. Divine power worked a miracle to bring forth Lazarus. There is no power in this land to do that office for this unwholesome thing. If it be dragged into this Hall for "admission," with a rope round its neck, in defiance of the popular will of Kansas, there will be scalpels used with a keen readiness, never before illustrated in political surgery.

Third. I deny, therefore, that it is congressional intervention in domestic affairs to question the form and mode of this application for the admission of Kansas. I do not affirm that Congress should say for Kansas whether she should have a bank, or not; (though if a bank becomes "vested" how are the people to get rid of it?) should have a Governor of twenty years' residence in the Union, or not; should pass on the taxing power of the

State, as to the public lands, or not; should have slavery, or not.

In domestic affairs the constitution may have all the excellencies of Plato's Ideal, More's Utopia, and Harrington's Oceana; it may be the transcript of angels from the tablets of the Omniscient Law-Giver; yet, if unsubmitted to the people, I would not vote for its admission. We have no right to force on men what is best for them in our own opinion. This has been the plea of despotism for ages. It is the hard dogma that sustains the perjured dynasties of Europe on their thrones. It is founded on the petrefaction of the human heart.

Neither, in domestic matters, do I care how bad the constitution may be, ethically or politically. If submitted, my approbation follows that of the people. This is non-intervention.

But when Congress undertakes to protect the people, in judging of these matters of domestic concernment, let it be done thoroughly and well. Let not Congress give the protection which the wolf gives the lamb. Let Congress, when it guaranties self-government, see to it that it is not a mockery, or a phantom, but a real, living, glowing reality—an opportunity for public volition, informed by conscience, and irradiate with intelligence—to decide for themselves, under the constitution, as to the laws under which they are to live.

For myself, I but repeat the expression of the Democracy of the capital district of Ohio, when I say that, however we may dislike slavery, we are utterly indifferent, as a political question, whether slavery goes to Kansas or not; provided the people pass on it honestly and fairly. Let it be a slave State; let it, on the other hand, be a free State; but let it be a State which is self-governing, for otherwise it is not republican.

When the bill of Mr. Dunn was presented to this body, for the pacification of Kansas, it made provision for the slaves in Kansas to remain there. The Democracy opposed that bill, because *Congress*, by it, undertook to intervene on the subject. Let the people pass such a provision in their constitution, and it shall be no objection to me that it is right or wrong. My answer is, it is the people's will! Congress, by Dunn's bill, was wrong in thus attempting to fix the *status* of any person in the Territory. The people can fix it as they please. It is their business. Far better let African slavery be established than an irresponsible tyranny. It matters not, that it may be changed the next day, or the next year. Anglo-Saxon independence will not brook this organized despotism. The English language has not servile syllables enough to spell out the presumptuous audacity of those delegates of Kansas, who have dared thus to steal the livery of sovereignty in the face of the thirty millions of thinking freemen of America! It is no question of African slavery, no maudlin sentimentality about the black race; but it is the right of the white man that is attempted to be filched from him by a pack of land-hucksters and political jobbers.

I have pledged myself to vote for the admission of Kansas as a slave State, if fairly made so. I am here to redeem that pledge; and now, to-day, would rather have Kansas a slave State, than to have its self-government beaten down under the heels of an irresponsible cabal. Fill Kansas with negroes as compactly as the district of my friend from South Carolina, where there are one hundred and ten thousand negroes to five thousand voters; am I right? (to Mr. KEITT.) [Mr. KEITT, (in his seat.) Yes, that's right. I wish there were more of them.]—but, in the name of Democratic fealty and Democratic sense, let us stand like men of trust and men of honor, to the sovereignty of the people, in whose will constitutions are but wisps of straw, and whose breath can make and unmake law, as it can make and unmake congressmen.

I said I was utterly indifferent as to the character of the domestic institutions formed and regulated in the constitution, provided they were all approved by that perfect freedom of action guarantied to the people by the Kansas and Nebraska bill.

First. I would limit this only as the United States Constitution limits it. In the third section of the tenth article, it says: "New States may be admitted by the Congress into this Union;" and in the subsequent section, it "guaranties to every State in this Union a republican form of government."

Coupled with this naked power to admit—a discretion to be used as other discretionary powers are used—is the limitation that the government must be republican. I hold that a constitution like that made at Lecompton cannot be republican; where it has no authority from Congress; no *imprimatur* from the people; and is no reflection of the popular will. The form may be republican in one sense; but that higher form, that essence, that fifth essence of republicanism, its *sine qua non*, the popular sense, is not expressed in it; and, therefore, as Mr. Buchanan said of Arkansas, it is a usurpation.

Second. Not only is there no substantial submission of the constitution to the people, but even the formal mode of submitting the propositions of the schedule do not insure fairness in voting or in the record of the voting. The agents to supervise the election have no check from, and no responsibility to, any other than the appointing power, which is the president of the convention. The commissioners are appointed by the president. They appoint the judges; the judges appoint the clerks. The poll books are returned to the president of the convention. No check by other officers, territorial or Federal. All is subordinate to the presiding genius whose constitution this is. Can such an election command confidence in the present condition of Kansas? The President hopes for peace by the acceptance of a constitution thus ratified. He says that if this opportunity of settling the question in Kansas should be rejected, "she may be involved for years in domestic discord, and possibly in civil war, before she can again make up the issue now so fortunately tendered, and again reach the point she has already attained." It seems to me that a state of anarchy will follow, if this election goes on, and is to be sustained by the strong Federal arm. Germany stood for thirty years with her hand upon her sword; the rustle of a leaf disturbed her. Kansas is in similar suspense. Never was there more need of heed, caution abundant, and beyond cavil or question, as to the popular expression.

Third. In the ninth section of the schedule, the voter, if challenged, is required to swear to support the constitution, under the pains of perjury. Is this republicanism? Is this miserable mode of making a constitution to be countenanced by this Congress?

Fourth. There is another ground for the rejection of this constitution. There is a fraud recognized in it, which we are bound, while inquiring into its republican form, to notice. The basis of popular will is the basis of representation. This is violated. In the creation of representative and council districts, the Oxford city fraud has been made the basis of estimating the population of Johnson county. The entire official vote of that county did not exceed four hundred. Fraud swelled it to eighteen hundred by the return of sixteen hundred fictitious names from Oxford city, a hamlet of three dwelling houses. Shawnee, with eight hundred voters—*bona fide* voters—gets only half the representation of Johnson. Well might Judge Elmore protest against this fraud. Well might Governor Walker complain of it, after having set it aside solemnly. Other frauds are to be found of a similar character. If we are to judge of the republicanism of the State to be inaugurated, we should discard this constitution.

This convention sanctioned this fraud, not only by making it the basis of representation, but by electing one of the creatures who signed the forgeries as their clerk. And I have it from the best authority, that the president of the convention himself is believed, by the body of the people of Kansas, to be implicated in this same fraud. Who that admits this fraud can sustain a constitution founded upon it?

Fifth. I hold, lastly, that that constitution is not republican in form; because, in the fourteenth section of the schedule, it prohibits—ay, that is the effect—amendment, alteration, or change until after 1864. It is utterly idle to say it meant to provide for alteration, amendment, and change meanwhile, *ad libitum*. When a constitution provides a mode and time to amend, *all other ways and times are excluded*. After implying no change till 1864, then it proceeds to hamper the "perfectly free" action of the people of 1864, by requiring two-thirds of the Legislature to concur, before they will allow a majority of the people to call for an amendment. And, as if to clinch the whole of this absurdity with another more glaring, it provides that even then "no alteration shall be made to affect the rights of property in the ownership of slaves."

Now, I do not seek to intervene in domestic affairs, when I declare that whatever may be the precedents in this respect, I will never vote for a State to come in under such impossible, absurd, and tyrannical conditions. Congress guaranties a republican form; and this constitution fetters every limb of that form.

"But," it is said, "these conditions are void. The State may turn around to-morrow and discard them all." So it may. New York did; so did Louisiana. But it was revolution. We have no right to force people into revolution against the established order. It may not be that revolution which, like a tempest, overturns the public authority by "wild sword law" or popular frenzy. It is not that inimitable thunder which aroused America in 1775, France in 1787, or England in 1630. It is rather like a machine, which, having a principle of compensation, corrects irregularities without breaking the machine or retarding its motion. Still, it is revolution; whether it be a perilous one or not, it is the only way to get rid of the restrictions placed on the popular will by this constitution. To those who say the State may, after admission, alter the constitution at once before 1864, I ask this question: Were the delegates in earnest when they forbade amendment till 1864? If so, they will attempt to carry out their ideas; and, in doing so, they must resist innovation. If they resist, there can be no assurance of a peaceful, harmless revolution. Those who attempt to amend provoke resistance; and they who vote for this constitution must resist that resistance. The consequences must be revolution and civil war. If the delegates were *not* in earnest in prohibiting amendment till 1864, what a mockery in us to approve of such wind-work, especially when bloody work must or may follow. The tracks of blood ever follow the wrongdoer, and follow him to the bitter, bitter end.

This constitution is made, in most respects, irrevocable until after 1864. The machinery for amendment begins to run then. Still it is an irrevocable law, and it is not only absurd, impossible, tyrannical, but anti-Democratic. Democracy, as taught in Ohio, believes in the repealibility of everything by the popular voice. My State has no power to-day to tax certain banks, because the Supreme Court of the United States, under the plea of "vested rights," has taken away our sovereignty in that respect. "Governments," said Burke, "without the means of change, are without the means of their own conservation." Who, that remembers the scorching logic of Jeremy Bentham and Sydney Smith, on the "fallacy of an irrevocable law," can fail to feel the utter silliness of those who propose to bind down the freemen of Kansas for ten years in most respects, and in one respect forever. I refer to Rentham, vol. 2, page 402; and to Sydney Smith, vol. 2, page 391.

"A law," says Mr. Bentham, (no matter to what effect,) "is proposed to a legislative assembly, who are called upon to reject it, upon the single ground, that by those who, in some former period, exercised the same power, a regulation was made having for its object to preclude forever, or to the end of an unexpired period, all succeeding legislators from enacting a law to any such effect as that now proposed."

Now, it appears quite evident that, at every period of time, every legislature must be endowed with all those powers which the exigency of the times may require; and any attempt to infringe on this power is inadmissible and absurd. The sovereign power, at any one period, can only form a blind guess at the measures which may be necessary for any future period; but by this principle of irrevocable laws, the government is transferred from those who are necessarily the best judges of what they want, to others who can know little or nothing about the matter.

If it be right that the conduct of the nineteenth century should be determined, not by its own judgment, but by that of the eighteenth, it will be equally right that the conduct of the twentieth century should be determined, not by its own judgment, but by that of the nineteenth. And if the same principle were still pursued, what, at length, would be the consequence? That in process of time the practice of legislation would be at an end. The conduct and fate of all men would be determined by those who neither knew nor cared any thing about the matter; and the aggregate body of the living would remain forever in subjection to an inexorable tyranny, exercised as it were by the aggregate body of the dead!

"The despotism," as Mr. Bentham well observes, "of Nero or Caligula, would be more tolerable than an *irrevocable law*. The despot, through fear or favor, or in a lucid interval, might relent; but how are the Parliament who made the Scotch union, for example, to be awakened from that dust in which they repose—the jobber and the patriot, the speaker and the doorkeeper, the silent voters and the men of rich allusions—Cannings and cultivators, Barings and beggars—making irrevocable laws for men who toss their remains about with spades, and use the relics of these legislators to give breadth to broccoli, and to aid the vernal eruption of asparagus?"

Long after Calhoun and his confederates shall have mouldered and have been forgotten, the men of Kansas will look with pity and contempt on this futile attempt to bind them by the decrees of 1857. The men of 1864—if not the men of 1858—will laugh to scorn this attempt. The border States of this country are not the places for such despotic experiments.

"If the law be good," says Bentham, "it will support itself; if bad, it should not be supported by the *irrevocable theory*, which is never resorted to but as the vail of abuses. All living men must possess the supreme power over their own happiness at every particular period. To suppose that there is anything which a whole nation cannot do, which they deem to be essential to their happiness, and that they cannot do it, because *another* generation, long ago dead and gone, said it must be done, is mere nonsense. While you are captain of the vessel, do what you please; but the moment you quit the ship, I become as omnipotent as you. You may leave me as much *advice* as you please, but you cannot leave me *commands;* though, in fact, this is the only meaning which can be applied to what are called irrevocable laws. It appeared to the Legislature for the time being to be of immense importance to make such and such a law. Great good was gained, or great evil avoided, by enacting it. Pause before you alter an institution which has been deemed to be of so much importance. This is prudence and common sense; the rest is the exaggeration of fools, or the artifice of knaves, who eat up fools.

"When a law is considered as immutable, and the immutable law happens at the same time to be too foolish and mischievous to be endured, instead of being repealed, it is clandestinely evaded, or openly violated, and thus the authority of all law is weakened."

If this irrevocable law be so absurd, tyrannical, and knavish in England, as it seems to be under this analysis, how utterly and abominably absurd, tyrannical, and knavish, is it in a nation like our own? *There*, laggard conservatism is so loth to change, that abuses are canonized and ancestry is deified! *Here*, change is the essential condition of social and

political existence: here, States are formed in the twinkling of an eye; cities grow up in a night, as if under the magic of Aladdin's lamp: here, economical ideas, more powerful than political tenets, are ever permeating the body politic, to change its form and substance: here, the border men are students of politics, and seek popularity and wealth by ameliorating institutions: here, the telegraph throws its thought from the very Capitol in which we speak to the borders of our territory; and the "goblin of steam," under the aid of congressional land grants, is doing the work of years in a week, and the work of a hundred years in one. Behind its power, the dwarf removes mountains and bridges rivers; civilization follows in the train. Here, in America, more than anywhere else, the poet's verse is appropriate:

"Beneath our starry arch
Nought resteth or is still,
But all things hold their march
As if by one great will.
Move one—move all!
Hark to the foot fall!
On—on—ever!"

Here in America, where the changes of a year are equal to the changes of a century in Europe, and where the changes of a lustrom only herald greater changes; and all through change, working out that secular magnificence which is the destiny of our land—we are to have irrevocable laws for our border States!

An irrevocable law in such a land! Enact that frost shall cease in the north and blooms in the south—fix the figure of Proteus or the air, by law; but let us not do such impossible tyranny for ten years, or one year. Why, California sprang into Statehood—the golden rigol of independence on her brow—in less than a twelvemonth! And Minnesota and Oregon, within the year, stand waiting to knock for admission. Washington, New Mexico, Arizonia, Dakotah, are pushing on toward the goal of independent sovereignty, and two years may see them where their sisters are now. An irrevocable law for such a land! Take Kansas; read the Indian treaties made by Colonel Manypenny, of 1854; and now visit Leavenworth, and ask if such a land is is to be irrevocably bound by the edicts of an irresponsible convention? In the name of republicanism, I trust it will never be pressed in this House.

It would be bad enough to accept a constitution, made under popular sanction, with irrevocable clauses; but made irrevocable, *without* such sanction it is monstrous and impossible. "Governments are republican," says Jefferson, "only as they embody the popular will and execute it."

In conclusion, I protest against this constitution, because it is against the principle of self-government—against the organic act—is not the authorized or legal expression of the people; because it is anti-republican in form and substance; because it is absurd, tyrannical, fraudulent, and impossible; because it undertakes to bind down the sovereignty of the people by irrevocable laws, which are opposed to the genius of our institutions.

But beyond all other objections is that implacable one, that cannot be appeased—the demand for its submission to the people, in whole and in part. Whatever may be the legality of the constitutional convention—whatever may be its work, and how irrevocable soever they have sought to make it, why has it not been submitted? Come to this question! Away with rubbish! Let us dig down to this primitive rock. "Ah, say its friends, "it will be voted down; the people will not have it." True, they do not want it. If the press of the Territory be any indication of the popular wish, that is true. But one out of the twenty-one presses of all parties in the Territory sustains it. Democrats and Republicans unite to condemn it. True, very true, it would have been voted down, and therefore it is not to be submitted to a vote. This is Democracy, is it? Let us, then, rewrite

our lexicons. Democracy means, does it? to withh[illegible] to all who may vote against you? Wise beyond [illegible] who thus teach! But the people of Kansas have acted wrong, are culpable, have not acted right in voting heretofore. But are they, for that, to be disfranchised? Away with such puerility. It reminds me of the gracious Sultan under the old Turkish constitution, who gave to the Ulemats the privilege of questioning his firmans; but if they exercised it, they were to be pounded to death in a mortar by the jannissaries.

This is no sectional question. The North has everything to gain by standing by its pledges and principles as enunciated in the Kansas bill. What has the South to gain by an opposite course? Does she expect to make Kansas a slave State? No. Would she, if she could, against the wish of the people? I say no! Does she wish to resuscitate the waning fortunes of a sectional party? If yea, then let her place the Northern Democracy in the wrong, where it can be reproached and insulted, taunted and despised; where our opponents, wagging their heads, may say: "You meant the South, you meant slavery, you meant everything else but popular sovereignty, when you mouthed of popular sovereignty."

Nor will it do for us to answer: "We adhere to the general principle of submitting the whole constitution, but cannot now apply it to Kansas." Such a reply will place us of the North in the position of the French fleet at Aboukir, which Nelson destroyed—it was neither at sea nor afloat. Give me the open sea, with a small craft, and the flag of popular sovereignty, in its integrity, at the mast-head, and I will not ask any favors that our opponents can bestow. I will trust my humble bark on the open sea without fear, nay, with confidence and joy! There is plain sailing for us, without tacking and filling, if we pursue the course proposed in the case of Wisconsin, where the condition of admission was the ratification by the people of the constitution. We can pursue that course in this instance without dishonor; or we can pass the Toombs bill with the amendment proposed by my colleague [Mr. SHERMAN) last session. It is as follows:

"*And the said constitution shall be submitted to the people for acceptance or rejection, under such regulations as said convention shall prescribe.*"

Who can object to such a course? Will the North—the South—the President—the people of Kansas? Will the Democracy of the Union? My vote shall be ready for such a solution of this difficulty. But it cannot be made ready to sanction the Lecompton contrivance. If it be the only record I have to make here, it will be a "no" that shall echo the voice of my constituency. Let Kansas come as Minnesota, in daylight, to the front door, in honest purpose, and manly bearing; and not as a burglar, in the dark, with the appliances of artifice, and a record of shame! Her people had a right to expect from this Government, if not from that convention, a full submission of her organic law. This right is denied. Being denied, her people can say, with a bitterness too well warranted by the history,

——"be these juggling fiends no more believ'd
That palter with us in a double sense;
That keep the word of promise to our ear,
And break it to our hope."

The events of the next month may alter the position of this question in this House and before the country; but for myself, nothing can change my determination to stand by the principles of Democracy, as we have pledged ourselves before the country. In this contest, I adopt as my motto the words of one who has sacrificed much for liberty in another land: "NOTHING FOR THE PEOPLE, BUT BY THE PEOPLE; NOTHING ABOUT THE PEOPLE, WITHOUT THE PEOPLE!"

I, therefore, give notice of my intention to introduce an act to enable Kansas to form a constitution, with the amendment above suggested.