THE KANSAS QUESTION.

SPEECH

OF

HON. THOMAS S. BOCOCK, OF VIRGINIA,

IN THE HOUSE OF REPRESENTATIVES, MARCH 8, 1858.

The House being in the Committee of the Whole on the state of the Union—

Mr. BOCOCK said:

Mr. CHAIRMAN: I prefer always to address myself to the subject before the House, but I know the difficulty which a gentleman encounters here in obtaining the floor, especially on so important a proposition as the one which I design to discuss. I therefore resolved some days, I may say weeks, ago, to avail myself of some suitable occasion in the Committee of the Whole on the state of the Union, to deliver to this committee some views which have presented themselves to my mind in relation to a question which has taken up so much of our time, and which has attracted so much of the public attention.

It was originally my intention, Mr. Chairman, to take but a brief glance, by way of preface and for the purpose of completing the view which it was my purpose to submit, at the original Kansas-Nebraska bill; but a speech delivered by my respected colleague from the Norfolk district, [Mr. MILLSON,] a short time ago, makes it incumbent upon me, in my judgment, to devote a larger portion of my time to a discussion of this preliminary question. I regret this very much; because I know that, in the brief hour allotted to us here, I should scarcely have been able to elaborate and enforce the views which I design to present upon the great and leading question. As the matter now is, I shall be able to touch but briefly the points I expected to make, both in reply to the speech of my colleague, and upon the main question itself.

And I wish to say here, that feeling confident that I shall not be able to get through all I have to say, I hope no gentleman will feel called upon to interrupt me, unless I say something which calls for personal explanation from him, individually.

Allow me one more word, by way of introduction. In what I may say in relation to the speech of my colleague, I desire to reciprocate most cordially the kind and friendly tone in which he expressed himself in relation to his colleagues, with whom he has heretofore differed on this Kansas question. And I am the more anxious to do so, because I know that I have not command of that accurate and precise phraseology which the gentleman himself commands, and which is necessary to give one's precise meaning.

The speech of my friend and colleague, like all his performances, and, perhaps, in a greater degree than any of them heretofore, was able and ingenious. The onward sweep of his logic was as regular and as graceful as the charge of the light brigade at Balaklava; but I say, with all respect, that, in my humble judgment, it led to no more useful or valuable result. What, sir, was the great lesson taught by the speech of my colleague? One might have supposed for a moment that his design was to enforce upon the attention of the House the fact that in accepting the Kansas-Nebraska bill in 1854, the South did not get all to which it was entitled. If I had been satisfied that this was the purpose and intention of my colleague, I should not have felt called upon to reply to it. But in view of the entire speech, and all the circumstances which surrounded it, that supposition cannot be maintained. Then, Mr. Chairman, could it be that my worthy friend and colleague felt himself called upon to expend so much ingenuity and ability, and to give us so fine a display of dialectics, for the purpose of proving that he foresaw all the evils which have occurred in Kansas, and that they are the legitimate and proper results of the Kansas-Nebraska bill? Sir, he who claims for himself the character of a prophet of the past, or a foreteller of woe, seeks a reputation which, in my humble judgment, is by no means desirable. One who felt deeply and thought strongly, and who knew well how to wreak his thought upon expression, has said:

> "Of all the horrid, hideous notes of hunum woe,
> Worse than the owl songs or the midnight blast,
> Is that portentous phrase '*I told you so!*'
> Uttered by friends, those prophets of the past,
> Who, instead of telling what you now should do,
> Own that they thought that you would fall at last,
> And solace your slight lapse 'gainst '*bonos mores*,'
> By a long memorandum of old stories."

A prophet of the past! Why, sir, it can avail but little in this case, at any rate; for if the evils which have occurred in Kansas are to continue; if the strife which has occasionally manifested itself there is to break forth anew and with increased violence, until the roar of battle and the fury of the storm shall fill the land with uproar, it will be but a poor privilege to come upon the stage, like the chorus in the ancient Greek tragedy, and in the lull of the tempest and the pause of the battle to sing a dirge of doom. If, on the contrary, Kansas is speedily to be admitted into the Union,

and under the benign and genial influences of State independence and State sovereignty, all these evils are to be first localized, and then banished forever. If "all the clouds that lower o'er our house," are to be "in the deep bosom of the ocean buried," then, in the panorama of contentment and prosperity which will follow, there will be no place for this wail of woe. The memory of Cassandra has but the greenness of the lichens and ivy that cover the ruins of Troy. It is mingled in the memory with the recollection of a falling city and a scattered people. Had Troy not fallen, it would long ago have perished like

"The fat weed that rots on Lethe's wharf."

I desire now, Mr. Chairman, to notice particularly, but briefly, the leading points made by my colleague in his speech against the original Kansas-Nebraska bill. They appear to me to have been twofold. He objected to it upon the ground that in its legal and necessary construction, it sustained the idea of territorial sovereignty; and he also objected to it on the ground that it contained what is called the Badger proviso. Permit me to consider those objections *seriatim*.

Mr. Chairman, I desire to say here, in the commencement of the remarks that I shall make upon this question of territorial sovereignty, that if that bill, in its legitimate and necessary construction, did tolerate the idea of territorial sovereignty, I should prefer it, both being constitutional, to the doctrine of congressional restriction; for under congressional restriction, if you have peace it will be the peace of admitted inferiority of rights on the one side, and admitted superiority of rights on the other. Under the doctrine of territorial sovereignty you might have strife and conflict; you would probably have a struggle among men of clashing interests and conflicting views to gain the ascendency; but poor as it would be, we would still have our chance, and we would have the consolation, at any rate, to know, if the question were decided against us, it would be decided by those who were to be most interested in the question at issue.

But, sir, I contend that the legitimate and necessary construction of that act does not sustain the idea of territorial sovereignty. The clause to which my colleague alludes is this:

"It being the true intent and meaning of this act not to legislate slavery into any Territory or State, nor to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States."

Now, it will be remembered that my colleague ridiculed the idea that the Congress of the United States intended gravely to abnegate the power to prohibit slavery in States of the Union already existing; but whatever this provision does not mean, it certainly does mean to do that. That is precisely what it does mean, most emphatically. No other construction can be given to it; and, perhaps, the reason for inserting such a provision in the bill was, that in the restriction of 1820 the power was clearly and distinctly assumed by the Congress of the United States to prohibit slavery in the States. Here is that restriction:

"SEC. 8. *And be it further enacted*, That in all that territory ceded by France to the United States, under the name of Louisiana, which lies north of 36° 30′ north latitude, not included within the limits of the State contemplated by this act, slavery and involuntary servitude, otherwise than in the punishment of crimes, whereof the parties shall have been duly convicted, shall be, and is hereby, forever prohibited."

And in the joint resolution for the annexation of Texas to the United States, we find this more distinct and emphatic clause:

"And in such State or States as shall be formed out of said territory north of said Missouri compromise line, slavery or involuntary servitude (except for crime) shall be prohibited."

There is the power distinctly claimed; and in the Kansas and Nebraska bill it is distinctly surrendered. I do not contend that the Constitution afforded any pretext for such an assertion of power. Far from it. The claim had been made, however, and the surrender should follow.

But the gentleman says that the insertion of the words "Territory or," before the word "State," makes that clause applicable to Territories in their territorial condition, as well as to States; and that the necessary construction of it is, that the people of Territories, as such, shall be left free to regulate their domestic affairs, including the subject of slavery, in their own way.

Now, Mr. Chairman, I do not contend—I would not be guilty of the want of candor to contend—that the language is not susceptible by possibility of such a construction. What I contend for is, that it is not the necessary construction of the clause. Now, sir, you will bear in mind, that the Territories of the United States often act in a somewhat anomalous manner. Consider, if you please, the case of the Territories of Florida, of Michigan, and of Iowa. You will bear in mind that, without any enabling act, without any authority whatsoever from the Congress of the United States, those Territories proceeded to form State constitutions, and presented them here, asking admission into the Union. What was their condition then? I admit the doctrine that this was a sort of declaration of independence on the part of these Territories, and that their subsequent admission into the Union was an acknowledgment of that independence. Congress was not bound to admit them, however; and if it had not, they would have remained in a territorial condition. Their *status* was then subject to the action of Congress. It might have been, then, in reference to this anomalous, or, if I may so express it, hermaphrodite condition, that the words "Territory or State" were used.

Now, sir, I submit that if the phraseology employed was applicable to the Territories in their territorial condition, the grant was made "subject to the Constitution of the United States." This proviso followed the grant, and controlled it. Whatever power we constitutionally had we gave up, and no more. The gentleman says that the Congress of the United States ought to interpret the Constitution for itself, and in passing a law should look to the constitutional limits and not surpass them. I admit, that when the Congress of the United States proposes to pass an ordinary act that is to be a rule of conduct for individuals, it ought to determine for itself, as far as it can, whether it be constitutional or unconstitutional; but this was no such act: this, following the manner of a deed, was a grant of power from the Federal Government to the Territorial Legislature; all that was done was to say, whatever power we have in relation to this subject, we surrender it to the Territorial Legislature. I contend, sir, that however the words "Territory or State" be construed, we were not called upon

to give an unconstitutional vote, for the limitation followed the grant wherever it went. As is frequently done in deeds from one man to another, we conveyed whatever power we had, subject to adjudication.

I submit now, whether we were not right in our action? The question of *territorial sovereignty* being a matter in dispute between northern and southern Democrats, then if we had required it to he adjudicated by Congress, it would have resulted that while we were wrangling upon this question, the opportunity to carry the more important point of repealing the Missouri restriction, would have been lost, perhaps irretrievably.

Now, sir, comes in the decision of the Supreme Court of the United States to determine the question. It says that this doctrine of territorial sovereignty has no countenance in the Constitution; and whatever evils my colleague may think arose before that time, from the doubt which existed on the subject, or whatever evils he might have apprehended from this cause, afterwards, from the time of the decision of the Supreme Court in regard to this case, the doctrine of the Kansas-Nebraska bill stood vindicated and redeemed from all suspicion or taint of encouraging *territorial sovereignty*. And I would say to my colleague that perhaps others may have foreseen the decision of the Supreme Court as well as himself. Since that decision, all his fears and all his troubles on this subject may be forever quieted.

I shall consider now, for a few brief moments, the other objection of my colleague. It is the objection to what is called the Badger proviso; and permit me to say here, Mr. Chairman, that when that proviso was introduced in the other wing of the Capitol, by the distinguished Senator whose name it bears, I regretted it. I regretted it because I thought it was a concession, in form at least, from the weaker and oppressed interest in the land, and that which had been so long suffering under the injustice of this Missouri restriction, to the stronger and aggressing interest. But I did not attribute to it that importance which my colleague does; and I desire to examine for a while into its true meaning and effect. What is that proviso? This is its language:

"Nothing herein contained shall be construed to revive or put in force any law or regulation that may have existed prior to the act of March, 1820, either protecting, establishing, prohibiting, or abolishing slavery."

Now, Mr. Chairman, I wish to consider that proviso in two points of view. The Missouri restriction, which the act of 1854 was intended to repeal, was constitutional or it was unconstitutional. I wish to look at it under both these suppositions. Suppose, now, that the Missouri restriction of 1820 was constitutional, what did it do? Why, sir, there were some old French or Spanish laws, recognizing slavery, which existed in the Territory of Louisiana when it was acquired from France, and which were, by tolerance, continued in existence. Here comes then the restriction of 1820, and, by implication, suspends these old laws, and makes the ground an open field; and after making it an open field, it next advances and takes possession of the field, and erects on it a barrier, a positive prohibition against the introduction of the peculiar property of the South. The effect of the restriction then was twofold. Now, by the repeal of the restriction by the act of 1854, what did we do, in that supposition? We, at least, removed the positive prohibition, and left again the open field of which I have spoken. In that supposition, did we not gain something?

Well, take the other supposition! Say, now, that the restriction of 1820 was unconstitutional! What, then, was the consequence of the restriction? Then it was null and void *ab initio*. It had no effect or force whatever. It did not repeal the old French or Spanish laws. They were not, in legal contemplation, suspended. Well, sir, what does this Badger proviso say? It says, "nothing *herein contained* shall be construed to revive or put in force," &c. But these laws did not require to be revived by that act of 1854. They were in existence *aleunde*—not by virtue of the act of 1854, but by virtue of their previous existence never having been suspended. The proviso says that the act of 1854 shall not put them in force. It does not say that they shall not be in force. I could enlarge on this idea, which I consider strictly legal and tenable; but I prefer, in the little time allowed me, not to dwell longer on this point. I wish to rise to a higher and more comprehensive, and, in my opinion, a more statesmanlike conception of this entire question. What is it, sir? Here, Mr. Chairman, had been a conflict in the land as to the question whether the Constitution of the United States, *proprio vigore*, extended or did not extend to the Territories of the United States.

The mighty intellects of Calhoun and Webster had met in stern conflict on this question on the floor of the Senate Chamber, and their followers throughout the country had ranged themselves on the one side and on the other. Not only that, Mr. Chairman, but there was also a contest whether this Government of the United States should be allowed to exert its power to discourage and limit the property of one section of the Union, and to extend and enlarge the property of the other section. The Kansas-Nebraska bill of 1854 comes in and decides both these questions. It declares the Constitution of the United States expressly extended to these Territories; and it further declares that the Government of the United States shall not exert its power or authority to limit or restrain the property of one portion of the Union, and to stimulate and encourage the interest of the other portion.

Here, then, we have the Government of the United States surrendering its authority over this question and expressly declaring the Constitution of the United States extended to these Territories. Then comes the decision of the Supreme Court in the Dred Scott case, declaring that the Constitution, so operating in the Territories, shall stand as a tower of strength and a muniment of defense for the property and interests of all sections of the Union—of the one section as well as the other. What now do you want with your wicker-work of Spanish and French laws? You have in the place of them the supreme power, the mighty influence, the permanent protection of the Constitution of the United States—the highest American law. You have in that a shield stronger than the shield of Achilles. You have a tower of strength more impregnable than twenty Cronstadts. And still you talk about your French and Spanish laws! This, sir, was a great era in the history of American legislation. It was the era of an abdication, of a surrender of usurped

power on the part of the Congress of the United States, and of a restoration of the Constitution to its true control and supremacy. It is an abdication and restoration more important, and grander in every point of view, than any abdication or restoration of "prince, potentate, or power," recorded in the history of the world. The Congress of the United States gives up its usurped power to limit the property of the South. The Constitution of the United States is restored to its former rule. And while all are rejoicing at this great era in American legislation, at this great abdication and restoration, my colleague chooses to stand by and complain that the usurper, in going out, takes with him a little of the dirty linen of the establishment.

But, sir, I wish to look at this subject as a subject of prophecy. There were more predictions made than one. There were more prophets than my colleague in the land at that time. The nation was then rather plethoric of prophets. It was declared, on the other hand, that if we did loose these French or Spanish laws, our property would enjoy the protection of the Constitution, and also such protection as might be given by the Territorial Legislature. And did we not have it? Herein was prophecy fulfilled. My colleague seems to think that the evils that have arisen in Kansas were the necessary and the logical results of the Kansas-Nebraska bill. Now, sir, I submit to him, whether, if they are the natural and legitimate results of the principles of the Kansas-Nebraska bill, the same consequences would not follow wherever the cause exists? But, sir, the principles of the Kansas and Nebraska bill were applied to the Territory of Nebraska; they have been applied also, in effect, to New Mexico; and why have not the same evils resulted there, if they follow necessarily from the principles of that bill?

If the principles of the Kansas-Nebraska bill had been adopted long years ago, before the public mind had become so distempered and diseased, no trouble would have followed; but, in my judgment, everything would have gone off smoothly and quietly under them. The settlement of Kansas would have been left to the ordinary laws of settlement; men would have gone there from the ordinary causes, to select them homes and work out their fortunes; all would have gone off well. It was because the public mind had become distempered and diseased; it was because the wranglings here on the floors of Congress had produced such heart-burnings and bad feelings between the two sections of the country, that these results followed. The extraordinary means adopted to settle Kansas; your *emigrant aid associations*, and the characters of the men whom they sent there; your Jim Lanes, and your Sharpe's rifles; these must bear the blame for the troubles which have arisen in Kansas.

Mr. Chairman, these evils are upon us, and it is proposed to settle them by the admission of Kansas into the Union as a State. The President of the United States has sent a message to the Congress of the United States, communicating to us the constitution adopted at Lecompton, and recommending that Kansas shall be admitted into the Union as a State under that constitution. I stand here to-day to take my position in favor of such admission, and I shall now proceed to give the reasons upon which I base my action.

Now, sir, I am free to admit that when this constitution comes to us we have the right to inquire, first, whether there is a sufficient population in Kansas to entitle her to come into the Union as a State. Well, sir, I believe there is no difference of opinion upon that subject. All parties are agreed upon that point. The Topeka men seem to have acted all along upon the supposition that there was population enough there to justify a State constitution. The Lecompton men have done the same, and those who sustained the measure proposed by the distinguished Senator from Georgia, during the last Congress, seem never to have objected on that ground.

Then, sir, I admit that you have the right to inquire whether the form of Government proposed is republican. I believe there is no difficulty upon that subject. All are agreed upon that point.

There is another and very important inquiry which we have a right to make. We have the right to inquire whether the constitution sent here is in fact the constitution of the State of Kansas or not; and it is to that point that I propose now to direct my remarks.

Now, sir, I wish to say in the beginning, that I design to argue this point with all fairness and candor if I can. I shall make certainly very liberal admissions to the gentlemen on the other side. I admit that all republican constitutions "derive their just powers from the consent of the governed." I admit the doctrines that "sovereignty makes constitutions;" that "sovereignty rests exclusively with the people of each State;" that "sovereignty cannot be delegated;" that it is "inalienable, indivisible," &c. I also admit fully the doctrines of the Kansas and Nebraska bill, that the people, when they come to form their constitution, should be left free to form and regulate their own institutions in their own way.

Now, sir, if I can maintain the propriety of the admission of Kansas into the Union upon those principles, gentlemen ought to acquiesce; if not, I lose my proposition, and I fail in the effort I am here to make.

In the first place, then, I admit that governments instituted among men derive their just powers from the consent of the governed. That is the first admission. But I deny that it is a necessary corollary from this principle that the constitution of a State shall be submitted to the votes of all the governed. On the contrary, no constitution that was ever framed, either in this or any other country, was ever submitted to the vote of all the people who were to be governed by it. How many of the States of this Union allow the African race to vote? I think New England and New York alone aspire to that "bad eminence." Yet the African race are among the governed. How many States in this Union allow a citizen just landed upon its soil from any other State, or from a foreign country, to vote? Not one, I believe. In most of the States in the Union, they require a man to have resided in the State for twelve months, even if a citizen of the United States, before he is allowed to vote. And yet, sir, they are among the governed. How many of the States of this Union allow females and children to vote? Not one; and yet, are they not in the list of the governed? Then it is a clear proposition, that the fact that a form of government derives its powers from the consent of the governed, does not require the

constitution to be submitted to all who are to be governed under it. I will show, in the sequel, that the consent of the governed is given on the representative principle.

The next concession which I make is to be found in a certain letter written by the late Governor of Kansas, upon the occasion of his resignation of office. He says that—

"Sovereignty makes constitutions; that sovereignty rests exclusively with the people of each State; that sovereignty cannot be delegated; that it is inalienable, indivisible, a unit incapable of partition."

Now, sir, I admit all that; but I will not concede for a moment, because sovereignty is inalienable, that *acts* of sovereignty cannot be exercised through some medium, organism, or representative agency; far from it. I think that the celebrated letter to which I refer affords a remarkable instance of how a really able man, when sustaining a heresy, may entangle and overthrow himself in the mazes of his own metaphysics. Robert J. Walker declares:

"It will not be denied that sovereignty is the only power that can make a State constitution, and that it rests exclusively with the people; and if it is inalienable, and cannot be delegated, as I have shown, then it can only be exercised by the people themselves."

And again, in reference to the Constitution of the United States, he says:

"Each State acted for itself alone in acceding to the Articles of Confederation in 1778, and each State acted for itself alone in framing and ratifying, each for itself, the Constitution of the United States. Sovereignty, then, with us, rests exclusively with the people of each State."

Here, sir, he assumes that each State adopted the Constitution of the United States for itself, and that the Constitution of the United States, being so adopted, has become the constitution of each particular State. Yet he seems not to have borne in mind that that very fact upsets his whole theory. Sir, the Constitution of the United States is not to-day binding in the State of Virginia, or in any other State of this Union, or else the doctrine is erroneous that it requires the people in their primary capacity to ratify it. Why, sir, the Constitution of the United States was framed by a convention and ratified by conventions and Legislatures in the several States; not in any one case was it referred to a direct vote of what Mr. Walker calls the sovereign people.

Sir, to declare war and to make peace—are they not acts of sovereignty? And are they not done by representative agencies? Why may not a constitution be formed in like manner? Mr. Chairman, a great deal of confusion exists in the public mind in relation to the question, who are the people in whom the sovereignty resides? I accord with the doctrine of Robert J. Walker, and say it resides in the masses. Every man and every citizen who has rights and power in the community is a part of the sovereign mass. All of the citizens together constitute the original fountain and source of all power in a community. They are the *sovereignty*. Now, sir, if sovereignty is a unit and indivisible, the whole sovereign mass must act together. If one citizen be wanting, the unity is broken and the sovereignty destroyed. It is clear, then, that if sovereignty resides in the mass, and is indivisible, it cannot be carried out into acts without a medium, an organism, or a representative agency, as the free mind cannot act except through the agency of the body. This results from the fact that it is impossible ever to get all the citizens together in consentaneous action. If this sovereignty is a unit, can a majority exercise that sovereignty? Those who do not act with the majority have a part of the sovereignty in themselves, and their dissent breaks the unity.

I wish now to inquire upon what principle the majority acts for a community, and what results from that fact? I say that the majority does not act for the community upon any principle of natural right. Let us suppose that the whole framework of Government could by some mighty convulsion be struck from existence in any State of the Union: what would follow? A primary meeting of the people would be held, to put into operation some rude structure of government. Would all the people assemble? By no means. That is always impossible. A great many would stay away, and those who stayed away would have a part of the sovereignty in themselves. But according to the principle declared by Governor Walker, those who came would be the representatives of those who stayed away. Each man who should attend the primary meeting would represent his absent neighbor and family; and, upon the principle of representation, that primary meeting could act for the whole. If the community left without government should consist of one hundred thousand people, not more than eighty thousand could assemble in primary meeting. How would they act? The eighty thousand would not agree upon all questions, or perhaps upon any question; and from necessity, a majority would control their decisions, unless a different rule were agreed on. Then forty-one thousand, being the majority of the eighty thousand, would speak for the whole community. Upon what principle of natural right or undivided sovereignty, I ask, can forty-one thousand declare the opinion of one hundred thousand? Again, take the case of the voters of a community. Upon what principle do they act for the whole? Are they the sovereign mass? No, sir, by no means. Take the case of Kansas itself; and allowing that there are one hundred thousand people in that territory, then say that the constitution is to be submitted to the voters. According to statistics, the number of votes would be about one fifth of the entire mass. Take the census of 1840 or 1850, and then the vote at the intervening and succeeding presidential election, and you will find that the votes are rarely, if ever, more than one fifth of the entire number of the people. Then if there were one hundred thousand people in Kansas, the number of voters might have been as high as twenty thousand. Of that twenty thousand, a majority would control, and eleven thousand would constitute that majority. Now, I ask, upon what principle of natural right, or of indivisible sovereignty, can eleven thousand voters declare the voice of one hundred thousand people? They are the organism or representative agency merely, through which the whole body speaks, just as a convention is the mouth-piece of the people.

Chief Justice Taney, in giving the opinion of the court in the Dred Scott case, says:

"Undoubtedly, a person may be a citizen—that is a member of the community who form the sovereignty—although he exercises no share of the political power, and is incapacitated from holding particular offices. Women and minors, who form a part of the political family, cannot vote; and when a property qualification is required to vote or hold a

particular office, those who have not the necessary qualifications cannot vote or hold the office, yet they are citizens."

There are a number of the citizens in every community who constitute a part of the body politic, who have a portion of the sovereignty in themselves, but who are not allowed to vote. The voters, then, only represent the people. They are not, in fact, the sovereign people. So I show the universality of the representative principle. A primary meeting, as usually constituted, is a representative agency. A convention is a representative agency. The voters are a representative agency, and any question between them is a question between different representative agencies. Each one speaks the voice of the people in its sphere, just as the agent when acting within his power speaks the voice of his principal. Talk about appealing from the convention to the sovereign people! I say, if you appeal to the voters, you only appeal from one representation to another representation. Perhaps broader, perhaps better, but still a representative agency. You deny the voice of one organism through which the people speak, and take the voice of another organism. When there is no law to determine who shall declare the voice of the people, the people are a law unto themselves, and necessity and circumstances determine. When you have an organized society, the law declares who shall speak for the people in each particular case.

Now, apply these principles to the case of Kansas. Who was authorized to speak the voice of the people of Kansas in relation to the constitution? The convention, and the convention only. Sir, the convention was the organism through which sovereignty spoke. Its voice was the voice of the people. The Constitution of the United States, framed, as I have said, by a convention, and ratified in each State by a convention, nevertheless announces itself as the act of the people. In its preamble it says: "We, the people of the United States, &c., &c., do ordain and establish this Constitution." So in Kansas, the convention was merely the mouth through which the people were presumed in law to speak. The constitution adopted by them was, therefore, the act of the people. You may think that another agency would have been better, but you cannot properly interfere, for this is that which was spoken when we said that we would "leave the people thereof (of Kansas) perfectly free to form and regulate their domestic institutions in their own way."

I have not undertaken to inquire whether the Legislature which called this convention was a legally-authorized Legislature. I do not think it necessary to stop to argue that question. I do not believe any lawyer in this House will, upon legal principles, deny the proposition. Though the first Legislature may have been elected originally by fraud, it was the government *de facto*, and was never set aside by any competent authority. We are bound to recognize its acts. The whole jurisprudence of Kansas rests upon the legality of the two last Legislatures—the one of which took the sense of the people whether there should be a convention, and the other of which passed the law calling the convention. Mr. Walker himself told them that all the usages and rights of the people of Kansas hung upon the legality of the Legislature of Kansas. He says:

"If that Legislature was invalid, then we are without law or order in Kansas—without town, city, or county organization; all legal and judicial transactions are void; all titles null, and anarchy reigns throughout our borders."

Permit me to illustrate this matter. You remember that a great complaint was made in regard to an election in a sister State not long ago. I am not here, upon this occasion, to decide whether those complaints were well or ill-founded. I can make any supposition I please by way of analogy. Let me say, then, for the sake of the argument, that the vote in the city of Baltimore was illegal, and that the vote of that city controlled the gubernatorial election, and the election of members of the Legislature enough to control the complexion of that body. Will gentlemen say that because that is so, the present Legislature of Maryland has no authority in the State, and that its acts are null and void? That body is the Legislature of Maryland. The Legislature which has the forms is the Legislature which has the power.

So it is in Kansas. Its Legislature passed a law which is admitted on all sides to be a fair law, for the assembling of a convention. Gentlemen contend that there has been a radical defect in the manner in which this law was carried out. Why, Mr. Chairman, I think that objection has already been very fully answered, and I shall occupy but little time upon it. It is a legal principle in law, which all these gentlemen around me understand, that nobody can take advantage of his own wrong, or of his own laches. If the law passed by the Legislature of Kansas for the assembling of that convention had not enabled them to have had a fair election, by which they could send up delegates who reflected the voice of the people, I say there might be something in the objection. But the law was sufficient. It was the fault of the people themselves if they were excluded; and that I will prove by the record. I say, if the people themselves had a chance to be represented in the convention, and would not be represented, it is too late for them to come now and complain; they cannot take advantage of their own laches. Here is what Mr. Stanton said in his message to the Legislature of Kansas at its called session on the 8th of December, 1857:

"The census therein provided for was imperfectly obtained from an unwilling people, in nineteen counties of the Territory; while, in the remaining counties, being also nineteen in number, from various causes, no attempt was made to comply with the law. In some instances, people and officers were alike averse to the proceeding; in others, the officers neglected or refused to act; and in some there was but a small population, and no efficient organization enabling the people to have a representation in the convention."

He declares here that the "people and officers were, in some cases, alike averse to the proceeding;" yet these people, or their friends, now complain.

But Mr. Stanton gives a fuller explanation of this matter in a speech recently delivered in New York. There he says:

"Well, now, gentlemen, shortly after I arrived in the Territory the process of taking the census was completed, and the returns were made by the sheriffs of the different counties to the probate judges of those counties, in order that the census returns might be corrected. That law which had been passed at the previous session of the Legislature of the Territory had provided that every voter in the Territory should be registered, and no man should be entitled to vote for delegates to the convention unless he was registered. Going through the Territory, I heard, on all sides, charges of great wrong and injustice; I heard the great

mass of the people proclaiming that the officers of the Territory had utterly disregarded right and justice in the performance of this duty; in fact, they had not performed the duty at all. They said in many instances men of high character, residents of long standing, men whose residence could not possibly have been unknown to the officers, had been left off the register. I said to them, Gentlemen, you might have gone to the probate judges, and had those names put on the lists. But they said it was not their duty to go, it was the duty of the officers to register their names. Now it is useless for any of us to disguise the truth. The great mass of the free-State people didn't care a fig whether their names were registered or not. They were opposed to the convention; they were opposed to all the laws, and all the proceedings under it."

The law ordered the sheriff in the month of March to make a census and registry, but to provide against any defect in the action of the sheriff it directs that the probate judges should afterwards sit and hear applications for a correction of the sheriffs' lists. Mr. Stanton, it appears, advised those that complained to go to these probate judges, but they refused, saying it was not their duty to go. If they might have gone and done themselves justice and refused to do it, I say it is altogether too late for them to come now and complain. But, sir, this is a most mysterious subject; there is much mist and confusion about it. Mr. Stanton says the number of counties deprived of representation in the convention was nineteen, while Governor Walker says there were fifteen. But look, if you please, and see what those gentlemen thought of it before the late singular turn in their political fortunes. Remember that this act for the taking of the census was passed long before Mr. Walker was appointed Governor of Kansas. The census was to be taken between the first and last of March; the probate judges were to sit from the 10th of April till the 1st of May; to make corrections in the sheriffs' lists, and the election was to take place in June. Now, Mr. Walker reached Lecompton on the 25th of May. At that time the whole matter was completed, and if there had been wrong done, it had been done before that, and he should have known it. Mr. Stanton was his *avant courier*—the John that went before to make his path straight. He had been in the Territory a considerable time, and according to his own account had received information on this subject, and doubtless communicated it. It cannot be presumed that Governor Walker failed to confer freely with him. What did he say on the 27th of May, in his inaugural, about the people being excluded from voting, and counties being disfranchised? Did he say, then, that there was any cause in existence that would prevent the people from voting for representatives in the convention? Here is what he said:

"I see in this act calling the convention no improper or unconstitutional restrictions upon the right of suffrage. I see in it no test oath or other similar provisions objected to in relation to previous laws, but clearly repealed, as repugnant to the provisions of this act, so far as regards the election of delegates to this convention. It is said that a fair and full vote will not be taken. Who can safely predict such a result? Nor is it just for a majority, as they allege, to throw the power into the hands of a minority, from a mere apprehension (I trust entirely unfounded) that they will not be permitted to exercise the right of suffrage."

He believed then, it appears, that there might be a full and fair vote, and urged the people to make the experiment. Then, sir, on the 27th of May, long after these errors were committed, (if they were committed at all,) Mr. Walker believed that no cause existed which should prevent a fair and full vote, according to his own inaugural. I say, then, that the legality of the Legislature is to be considered incontestable; and the law passed by that body for a convention being a fair law, under which no man was prevented from voting except by his own fault or neglect, and the voters having previously ordered a convention, that convention is a fair mouth-piece for the people in its own proper sphere. What was that sphere? It was to make and proclaim a constitution. So I think the law of its formation shows. It was the mouth-piece of the people in this respect, and the people spoke through it. It had the right, so far as Kansas was concerned, to proclaim the constitution, and did proclaim the constitution. I have seen it argued that they had the right to proclaim the constitution, but chose to submit it, and did not submit it fairly for ratification. Though I have seen great names vouching for this idea, though I have seen it held forth from the capitols of States and from the Capitol of this Union, yet, in my humble judgment, it hardly rises to the dignity of special pleading. It seems rather to be the merest quibble, sir. Did not the convention proclaim the constitution? Did they not say in the seventh section of their schedule: "This constitution shall be submitted to the Congress of the United States at its next ensuing session?" Were there any terms or conditions on which the constitution was not to come here for acceptance? None whatever. That was a certain and fixed fact, with which nothing should interfere. The constitution, then, so far as Kansas was concerned, was a thing accomplished, except as to one single clause upon which a vote was to be taken. When they talk about submitting it for ratification or rejection, they always say, by way of qualification, "as follows," or "in the following manner or form," &c., under which phrase the extent of submission is always explained. They may not have used the most elegant phraseology; they may not have used the language best adapted to convey their ideas; but to say, because of this awkward phraseology, that they did not proclaim the constitution, but did actually submit it, seems to resemble very much the course of the young practitioner at the bar who demurs to a declaration on the ground that some word is spelt badly or that some phrase is ungrammatical. It is what is sometimes called pettifogging. The constitution being proclaimed, it was to be considered the act of the State of Kansas, and could not afterwards be affected by the action of the voters of the Territory; because you are to consider the thing in the relation in which it will stand when the constitution is admitted. The act of admission will relate back and raise the act of adoption to the dignity of sovereignty. It is to be considered as having been a State at that time. This is always the operation of the act of admission. Congress can only admit States, not Territories. States only can form constitutions, not Territories. The Territory declares its independence and asserts its sovereignty as a State, and Congress, by admission, recognizes its claim. This is the mode in which many, if not all, the new States have come into the Union. If, then, you would try the question whether this is the constitution of Kansas or not, you must try it by legal testimony as you would try the question as a juror whether a prisoner were guilty or not guilty. If the legal testimony acquitted, and you from some hearsay rumors should find the accused guilty, you would

commit a great outrage. So here; if the legal evidence, which is the voice of the people speaking through the convention, says that this is the constitution of Kansas, you have no right to look elsewhere for proof. All else is illegal testimony. The voters are not authorized to annul the former action of the people in this particular.

Gentlemen may say that this is a legal and technical view of the question. All I have to say about that is, that if we have the law upon our side, how can the other side come and ask for equity? He who asks equity must do equity. He who comes into court in such a capacity must come with clean hands. In what condition do the Topekaites come before us to make complaint? The last President, the present President of the United States, Governor Walker himself, all have said that these men come not with clean hands. It is proclaimed on all sides that they were combining and consorting together to overthrow the existing government; that they were guilty of moral treason, of sedition, of everything except actual treason; and for them to come now and ask equity against those who have the law upon their side, is, it seems to me, making a most unheard of demand. When an alien comes here, you do not allow him to vote till he has renounced his allegiance to his own Government, and proclaimed his allegiance to this, because you have not evidence of his attachment to this Government. We require a citizen of another State to remain some time in our own State, in order to give evidence of attachment to our institutions. These men have heretofore not only given no evidence of attachment to the institutions of Kansas, but every evidence of malignant hate. Let Governor Walker tell their spirit and temper. In his proclamation to the people of Lawrence, he says:

"Permit me to call your attention, as still claiming to be citizens of the United States, to the results of your revolutionary proceedings. You are inaugurating rebellion and revolution; you are disregarding the laws of Congress and of the territorial government, and defying their authority; you are conspiring to overthrow the Government of the United States in this Territory. Your purpose, if carried into effect in the mode designated by you, by putting your laws forcibly into execution, would involve you in the guilt and crime of treason. You stand now, fellow-citizens, upon the brink of an awful precipice, and it becomes my duty to warn you ere you take the fatal leap into the gulf below. If your proceedings are not arrested, you will necessarily destroy the peace of this Territory, and involve it in all the horrors of civil war. I warn you, then, before it is too late, to recede from the perilous position in which you now stand."

And these are the men who ask for a relaxation of law in their behalf!

I intended to have said a few words further in reference to this point, but I have not time. I want to say to gentlemen on the other side of the Hall, who have sought to establish the Topeka constitution, and who, nevertheless, come here and complain of irregularity—I want to say to those who talk about subverting the will of the people and popular sovereignty, and who, at the same time, boldly declare that if every man, woman, and child within the limits of Kansas were to ask for a slave-protecting constitution, they would not allow it—I want to say to them: "Oh, for a forty-parson power to chant your praise, hypocrisy!" I make no appeal to them. But there are gentlemen on this side of the Hall, Mr. Chairman, who do imagine, at least, that they follow their doctrines to their logical and natural results in opposing the admission of Kansas. There are men who do believe that the principles of popular sovereignty lead to this conclusion. To them I appeal. Think again, and trust your friends a little more. A more patient and confiding examination may yet show, that by logical and fair deduction, that doctrine leads to the conclusions which I have spoken.

I have seen in reference to some of them, and particularly to a distinguished gentleman in the other wing of the Capitol, that he has left the standard under which he so long fought; has parted from friends whom he has proved and found faithful; and has turned away to join the ranks of his life-long enemies. It is true, too, that he carries many with him When the archangel rebelled in heaven, he carried a tenth part of the heavenly hosts with him. If the gentleman continues in his defection, he can find neither his interest nor his pleasure in the bosom of his new allies. He cannot in his heart approve their principles or purposes. They have too many of their own, older, and more tried leaders, to reward, to do aught for him. They have on their bodies too many scars inflicted by his stalwart arm to love him overmuch. If it is not yet too late for him to hearken to the voice of one whom he knows to have been for long years, and truly, his friend, I would call upon him to come back and take his position again in the ranks of that party whose triumphs and whose successes have been the dream of his boyhood and the glory of his manhood. I know that that would require some sacrifice of personal feeling. A great man can make that sacrifice; a little man cannot. Convince a small man, and he hates you forever. A great man sees the error of his ways, and retraces his steps. He will have the consolation of restoring harmony to the only national party left in the land; and what is higher, and holier, and better, he may restore peace to a torn, an exasperated, and an endangered country. Stern truth requires me to say that, whether he returns or does not return; let whoever may choose turn against us or turn for us—our course is onward. If, as I trust, it is onward to victory, then whoever may throw himself in our path will be but crushed beneath the wheels of our conquering chariot. But whether the course of the Democratic party is onward to victory or to defeat, still for us of the South there is no retreat We are the weaker and the endangered section. We cannot yield our ground. The stronger may, and yet be strong and mighty, and greatly preponderant. We strike for safety and self-protection: they for accumulated power. I do not know what will be the effect of a refusal to admit Kansas under the Lecompton constitution. I am not authorized to speak the views of Virginia. She has not spoken for herself. But I will say this: that, in my judgment, wherever a true and enlightened view of her own honor leads, there she will go; and when she speaks, there is not a true son of hers in all the land, wherever he may be, who will not follow her command. And this, too, I will say: that, although hand join in hand to prevent, the destiny of Virginia, for once and for all, for now and forever, is indissolubly united with that of her sister States of the South.

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