surrendered our title to Texas by this treaty. Spain held up ratification in an effort to secure from the United States a pledge not to recognize the revolting Spanish Colonies. On the Treaty, see H. B. Fuller, *Purchase of Florida;* T. M. Marshall, *Western Boundary of the Louisiana Purchase;* S. F. Bemis, ed. *American Secretaries of State,* Vol. IV, p. 7 ff.

. . . ART. II. His Catholic Majesty cedes to the United States, in full property and sovereignty, all the territories which belonged to him, situated to the eastward of the Mississippi, known by the name of East and West Florida. The adjacent islands dependent on said provinces, all public lots and squares, vacant lands, public edifices, fortifications, barracks, and other buildings, which are not private property, archives and documents, which relate directly to the property and sovereignty of said provinces, are included in this article. . . .

ART. III. The boundary line between the two countries, west of the Mississippi, shall begin on the Gulph of Mexico, at the mouth of the river Sabine, in the sea, continuing north, along the western bank of that river, to the 32d degree of latitude; thence, by a line due north, to the degree of latitude where it strikes the Rio Roxo of Natchitoches, or Red River; thence following the course of the Rio Roxo westward, to the degree of longitude 100 west from London and 23 from Washington; then, crossing the said Red River, and running thence, by a line due north, to the river Arkansas, thence, following the course of the southern bank of the Arkansas, to its source, in latitude 42 north; and thence, by that parallel of latitude, to the South Sea. The whole being as laid down in Melish's map of the United States, published at Philadelphia, improved to the first of January, 1818. But if the source of the Arkansas River shall be found to fall north or south of latitude 42, then the line shall run from the said source due north or south, as the case may be, till it meets the said parallel of latitude 42, and thence, along the said parallel, to the South Sea: All the islands in the Sabine, and the said Red and Arkansas Rivers, throughout the course thus described, to belong to the United States; but the use of the waters, and the navigation of the Sabine to the sea, and of the said rivers Roxo and Arkansas, throughout the extent of the said boundary, on their respective banks, shall be common to the respective inhabitants of both nations. . . .

ART. V. The inhabitants of the ceded territories shall be secured in the free exercise of their religion, without any restriction. . . .

ART. VI. The inhabitants of the territories which His Catholic Majesty cedes to the United States, by this treaty, shall be incorporated in the Union of the United States, as soon as may be consistent with the principles of the Federal Constitution, and admitted to the enjoyment of all the privileges, rights, and immunities of the citizens of the United States. . . .

ART. XI. The United States, exonerating Spain from all demands in future, on account of the claims of their citizens to which the renunciations herein contained extend, and considering them entirely cancelled, undertake to make satisfaction for the same, to an amount not exceeding five millions of dollars. To ascertain the full amount and validity of those claims, a commission, to consist of three Commissioners, citizens of the United States, shall be appointed by the President, by and with the advice and consent of the Senate. . . .

ART. XV. Spanish vessels, laden only with productions of Spanish growth or manufacture, coming directly from Spain, or her colonies, "shall be admitted, for the term of twelve years, to the ports of Pensacola and St. Augustine, without paying other or higher duties on their cargoes, or of tonnage, than will be paid by the vessels of the United States. During the said term no other nation shall enjoy the same privileges within the ceded territories. . . .

121. THE MISSOURI COMPROMISE
1819–1821

The Territory of Missouri was part of the Louisiana Purchase; by the terms of this purchase the inhabitants of the Territory were guaranteed in their liberty, property, and religion. When in 1818 Missouri petitioned for admission to the Union as a State, the question

arose whether this guaranty covered property in slaves of whom there were some two or three thousand in the Territory. In the course of the discussion of the enabling act, Representative Tallmadge of New York offered an amendment excluding slavery from the State. This amendment passed the House but failed in the Senate. That summer and fall the Missouri question was the chief political issue before the country; Congress was bombarded with petitions from State legislatures and other bodies on the slavery issue. In the new Congress the positions of the House and the Senate are indicated by the passage in the House of the Taylor Amendment, in the Senate of the Thomas Amendment. The application of Maine for admission as a State offered Congress a way out of the difficulty. A conference committee reported bills to admit Maine to Statehood, and to admit Missouri with the Thomas Amendment. An act authorizing Missouri to form a state government was approved March 6, but the constitution which the Missouri Convention drew up contained a clause obnoxious to the anti-slavery element, and probably unconstitutional, and Congress refused to admit the State under this constitution. A conference committee worked out a solution to the problem which was provided in the Resolutions for the admission of Missouri of March 2. The conditions laid down were accepted by the legislature of Missouri in June, and Missouri was admitted to Statehood by proclamation of August 10. On the Missouri Compromise see F. J. Turner, *Rise of the New West,* ch. x; H. Von Holst, *Constitutional and Political History of the United States,* Vol. I, p. 324 ff.; J. B. Mc Master, *History of the People of the United States,* Vol. IV, ch. xxxix; F. C. Shoemaker, *Missouri's Struggle for Statehood, 1804–1821;* J. A. Woodburn, "Historical Significance of the Missouri Compromise," Amer. Hist. Assoc. *Report,* 1893; F. R. Hodder, "Side Lights on the Missouri Compromises" Amer. Hist. Assoc. *Report,* 1909; H. A. Trexler, *Slavery in Missouri, 1804–1865;* H. V. Ames, *State Documents on Federal Relations,* p. 193 ff.; C. R. King, *Life and Correspondence of Rufus King,* Vol. VI.

1. THE TALLMADGE AMENDMENT
February 13, 1819

(*Journal of the House of Representatives,* 15th Congress, 2nd. Sess. p. 272)

And provided also, That the further introduction of slavery or involuntary servitude be prohibited, except for the punishment of crimes, whereof the party shall be duly convicted; and that all children of slaves, born within the said state, after the admission thereof into the Union, shall be free but may be held to service until the age of twenty-five years.

2. THE TAYLOR AMENDMENT
January 26, 1820

(*Annals of the Congress of the United States,* 16th Cong. 1st. Sess. Vol. I, p. 947)

The reading of the bill proceeded as far as the fourth section; when

MR. TAYLOR, of New York, proposed to amend the bill by incorporating in that section the following provision:

Section 4, line 25, insert the following after the word "States"; "And shall ordain and establish, that there shall be neither slavery nor involuntary servitude in the said State, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted: *Provided, always,* That any person escaping into the same, from whom labor or service is lawfully claimed in any other State, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid: *And provided, also,* That the said provision shall not be construed to alter the condition or civil rights of any person now held to service or labor in the said Territory."

3. THE THOMAS AMENDMENT
February 17, 1820

(*Annals of the Congress of the United States,* 16th Cong. 1st Sess. Vol. I, p. 427)

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 thirty-six degrees and thirty minutes north latitude, excepting only such part thereof as is included within the limits of the State contemplated by this act, slavery and involuntary servitude, otherwise than in the punishment of crimes whereof the party shall have been duly convicted, shall be and is hereby forever prohibited: *Provided always,* That any person escaping into the same, from whom labor or service is lawfully claimed in any State or Territory of the United States, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service, as aforesaid.

4. MISSOURI ENABLING ACT
March 6, 1820

(*U. S. Statutes at Large*, Vol. III, p. 545 ff.)

An Act to authorize the people of the Missouri territory to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states, and to prohibit slavery in certain territories.

Be it enacted That the inhabitants of that portion of the Missouri territory included within the boundaries hereinafter designated, be, and they are hereby, authorized to form for themselves a constitution and state government, and to assume such name as they shall deem proper; and the said state, when formed, shall be admitted into the Union, upon an equal footing with the original states, in all respects whatsoever.

SEC. 2. That the said state shall consist of all the territory included within the following boundaries, to wit: Beginning in the middle of the Mississippi river, on the parallel of thirty-six degrees of north latitude; thence west, along that parallel of latitude, to the St. Francois river; thence up, and following the course of that river, in the middle of the main channel thereof, to the parallel of latitude of thirty-six degrees and thirty minutes; thence west, along the same, to a point where the said parallel is intersected by a meridian line passing through the middle of the mouth of the Kansas river, where the same empties into the Missouri river, thence, from the point aforesaid north, along the said meridian line, to the intersection of the parallel of latitude which passes through the rapids of the river Des Moines, making the said line to correspond with the Indian boundary line; thence east, from the point of intersection last aforesaid, along the said parallel of latitude, to the middle of the channel of the main fork of the said river Des Moines; thence down and along the middle of the main channel of the said river Des Moines, to the mouth of the same, where it empties into the Mississippi river; thence, due east, to the middle of the main channel of the Mississippi river; thence down, and following the course of the Mississippi river, in the middle of the main channel thereof, to the place of beginning: . . .

SEC. 3. That all free white male citizens of the United States, who shall have arrived at the age of twenty-one years, and have resided in said territory three months previous to the day of election, and all other persons qualified to vote for representatives to the general assembly of the said territory, shall be qualified to be elected, and they are hereby qualified and authorized to vote, and choose representatives to form a convention. . . .

SEC. 8. That in all that territory ceded by France to the United States, under the name of Louisiana, which lies north of thirty-six degrees and thirty minutes 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: *Provided always*, That any person escaping into the same, from whom labour or service is lawfully claimed, in any state or territory of the United States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labour or service as aforesaid.

5. THE CONSTITUTION OF MISSOURI
July 19, 1820

(Poore, ed., *Federal and State Constitutions*, Vol. II, p. 1107–8)

SEC. 26. The general assembly shall not have power to pass laws—

1. For the emancipation of slaves without the consent of their owners; or without paying them, before such emancipation, a full equivalent for such slaves so emancipated; and,

2. To prevent *bona-fide* immigrants to this State, or actual settlers therein, from bringing from any of the United States, or from any of their Territories, such persons as may there be deemed to be slaves, so long as any persons of the same description are allowed to be held as slaves by the laws of this State.

They shall have power to pass laws—

1. To prevent *bona-fide* immigrants to this State of any slaves who may have committed any high crime in any other State or Territory;

2. To prohibit the introduction of any slave for the purpose of speculation, or as an article of trade or merchandise;

3. To prohibit the introduction of any slave, or the offspring of any slave, who heretofore may have been, or who hereafter may be, imported from any foreign country into the United States, or any Territory thereof, in contravention of any existing statute of the United States; and,

4. To permit the owners of slaves to emancipate them, saving the right of creditors, where the person so emancipating will give security that the slave so emancipated shall not become a public charge.

It shall be their duty, as soon as may be, to pass such laws as may be necessary—

1. To prevent free negroes end [and] mulattoes from coming to and settling in this State, under any pretext whatsoever; and,

2. To oblige the owners of slaves to treat them with humanity, and to abstain from all injuries to them extending to life or limb.

6. RESOLUTION FOR THE ADMISSION OF MISSOURI
March 2, 1821

(*U. S. Statutes at Large*, Vol. III, p. 645)

Resolution *providing for the admission of the State of Missouri into the Union, on a certain condition.*

Resolved, That Missouri shall be admitted into this union on an equal footing with the original states, in all respects whatever, upon the fundamental condition, that the fourth clause of the twenty-sixth section of the third article of the constitution submitted on the part of said state to Congress, shall never be construed to authorize the passage of any law, and that no law shall be passed in conformity thereto, by which any citizen, of either of the states in this Union, shall be excluded from the enjoyment of any of the privileges and immunities to which such citizen is entitled under the constitution of the United States: *Provided*, That the legislature of the said state, by a solemn public act, shall declare the assent of the said state to the said fundamental condition, and shall transmit to the President of the United States, on or before the fourth Monday in November next, an authentic copy of the said act; upon the receipt whereof, the President, by proclamation, shall announce the fact; whereupon, and without any further proceeding on the part of Congress, the admission of the said state into this Union shall be considered as complete.

122. LAND LAW OF 1820
April 24, 1820

(*U. S. Statutes at Large*, Vol. III, p. 566–7)

This law reduced the price of public land and put an end to the credit system established by the Act of 1800. See, P. J. Treat, *National Land System, 1785–1820;* T. Donaldson, *The Public Domain: its History with Statistics.*

An act making further provision for the sale of the public lands.

Be it enacted, That from and after the first day of July next, all the public lands of the United States, the sale of which is, or may be authorized by law, shall, when offered at public sale, to the highest bidder, be offered in half quarter sections; and when offered at private sale, may be purchased, at the option of the purchaser, either in entire sections, half sections, quarter sections, or half quarter sections; . . .

SEC. 2. That credit shall not be allowed for the purchase money on the sale of any of the public lands which shall be sold after the first day of July next, but every purchaser of land sold at public sale thereafter, shall, on the day of purchase, make complete payment therefor; . . .

SEC. 3. That from and after the first day of July next, the price at which the public lands shall be offered for sale, shall be one dollar and twenty-five cents an acre; and at every public sale, the highest bidder, who shall make payment as aforesaid, shall be the purchaser; but no land shall be sold, either at public or private sale, for a less price than one dollar and twenty-five cents an acre; and all the public lands which shall have been offered at public sale before the first day of July next, and which shall then remain unsold, as well as the lands that shall thereafter be offered at public sale, according to law, and remain unsold at the close of such public sales, shall be subject to be sold at private sale, by entry at the land office, at one dollar and twenty-five cents an acre, to be paid at the time of making such entry as aforesaid; . . .

of the better sort of heathen standards, can any one hesitate, for a moment, in declaring which of the two will produce the greater amount of human welfare, and which, therefore, is the more conformable to the divine will? The European theory is blind to what constitutes the highest glory as well as the highest duty of a State. . . .

Our ambition as a State should trace itself to a different origin, and propose to itself a different object. Its flame should be lighted at the skies. Its radiance and its warmth should reach the darkest and the coldest of abodes of men. It should seek the solution of such problems as these: To what extent can competence displace pauperism? How nearly can we free ourselves from the low-minded and the vicious, not by their expatriation, but by their elevation? To what extent can the resources and powers of Nature be converted into human welfare, the peaceful arts of life be advanced, and the vast treasures of human talent and genius be developed? How much of suffering, in all its forms, can be relieved? or, what is better than relief, how much can be prevented? Cannot the classes of crimes be lessened, and the number of criminals in each class be diminished? . . .

Now two or three things will doubtless be admitted to be true, beyond all controversy, in regard to Massachusetts. By its industrial condition, and its business operations, it is exposed, far beyond any other State in the Union, to the fatal extremes of overgrown wealth and desperate poverty. Its population is far more dense than that of any other State. It is four or five times more dense than the average of all the other States taken together; and density of population has always been one of the proximate causes of social inequality. According to population and territorial extent there is far more capital in Massachusetts—capital which is movable, and instantaneously available—than in any other State in the Union; and probably both these qualifications respecting population and territory could be omitted without endangering the truth of the assertion. . . .

Now surely nothing but universal education can counterwork this tendency to the domination of capital and the servility of labor. If one class possesses all the wealth and the education, while the residue of society is ignorant and poor, it matters not by what name the relation between them may be called: the latter, in fact and in truth, will be the servile dependents and subjects of the former. But, if education be equally diffused, it will draw property after it by the strongest of all attractions; for such a thing never did happen, and never can happen, as that an intelligent and practical body of men should be permanently poor. Property and labor in different classes are essentially antagonistic; but property and labor in the same class are essentially fraternal. The people of Massachusetts have, in some degree, appreciated the truth that the unexampled prosperity of the State—its comfort, its competence, its general intelligence and virtue—is attributable to the education, more or less perfect, which all its people have received; but are they sensible of a fact equally important,—namely, that it is to this same education that two-thirds of the people are indebted for not being to-day the vassals of as severe a tyranny, in the form of capital, as the lower classes of Europe are bound to in any form of brute force?

Education then, beyond all other devices of human origin, is a great equalizer of the conditions of men,—the balance wheel of the social machinery. I do not here mean that it so elevates the moral nature as to make men disdain and abhor the oppression of their fellow men. This idea pertains to another of its attributes. But I mean that it gives each man the independence and the means by which he can resist the selfishness of other men. It does better than to disarm the poor of their hostility toward the rich: it prevents being poor. Agrarianism is the revenge of poverty against wealth. The wanton destruction of the property of others—the burning of hay-ricks, and corn-ricks, the demolition of machinery because it supersedes hand-labor, the sprinkling of vitriol on rich dresses—is only agrarianism run mad. Education prevents both the revenge and the madness. On the other hand, a fellow-feeling for one's class or caste is the common instinct of hearts not wholly sunk in selfish regard for a person or for a family. The spread of education, by enlarging the cultivated class or caste, will open a wider area over which the social feelings will expand; and, if this education should be universal and complete, it would do more than all things else to obliterate factitious distinctions in society. . . .

For the creation of wealth, then,—for the existence of a wealthy people and a wealthy nation,—intelligence is the grand condition. The number of improvers will increase as the intellectual constituency, if I may so call it, increases. In former times, and in most parts of the world even at the present day, not one man in a million has ever had such a development of mind as made it possible for him to become a contributor to art or science. . . . Let this development proceed, and contributions . . . of inestimable value, will be sure to follow. That political economy, therefore, which busies itself about capital and labor, supply and demand, interests and rents, favorable and unfavorable balances of trade, but leaves out of account the elements of a wide-spread mental development, is naught but stupendous folly. The greatest of all the arts in political economy is to change a consumer into a producer; and the next greatest is to increase the producing power,—and this to be directly obtained by increasing his intelligence. For mere delving, an ignorant man is but little better than a swine, whom he so much resembles in his appetites, and surpasses in his power of mischief. . . .

174. THE COMPROMISE OF 1850

The new territorial accessions that resulted from the War with Mexico precipitated the slavery question into politics in an inescapable manner. As early as August, 1846, David Wilmot of Pennsylvania had introduced into the House a resolution "That as an express and fundamental condition to the acquisition of any territory from the republic of Mexico by the United States, by virtue of any treaty which may be negotiated between them . . . neither slavery nor involuntary servitude shall ever exist in any part of said territory." This resolution was never passed by Congress, but the principle it expressed was aggressively maintained by the anti-slavery element. In 1848 Oregon was organized as a Territory and the principle of the Northwest Ordinance applied, but efforts to organize California and New Mexico failed. In 1849 the people of California took matters into their own hands by adopting a constitution which prohibited slavery. With the entire country seething with excitement and threats of secession coming from everywhere in the South, the stage was set for the greatest debate in Congressional history. Clay, Webster, Calhoun, Davis, Seward, Chase and others participated in the discussion. January 29 Clay introduced his compromise resolutions. The resolutions were submitted to a committee of which Clay was chairman and reported as two bills: an Omnibus Bill covering the organization of the Territories, and a bill to prohibit the slave trade in the District of Columbia. In the course of the debates on these bills Calhoun, too feeble to speak, presented his last denunciation of Northern aggressions, Webster made his famous Seventh of March speech, and Clay his last effort to save the Union. The Omnibus Bill was finally passed in separate acts. The Bill to admit California as a State was passed and approved September 9. On the Compromise of 1850 see J. F. Rhodes, *History of the United States Since the Compromise of 1850,* Vol. I; H. Von Holst, *Constitutional History of the United States,* Vol. III; J. Shouler, *History of the United States,* Vol. V; E. Channing, *History of the United States,* Vol. VI, chs. iii–iv; C. Schurz, *Henry Clay,* Vol. II; C. Fuess, *Daniel Webster,* Vol. II; H. Von Holst, *Calhoun;* W. E. Dodd, *Jefferson Davis;* A. Johnson, *Stephen A. Douglas;* A. B. Hart, *Samuel P. Chase.* The important debates can be found in T. H. Benton's *Abridgement of the Debates in Congress,* Vol. XVI. The speeches of Calhoun, Webster and Clay are reprinted in A. Johnston and J. A. Woodburn, *American Orations,* Vol. II. Many interesting letters are preserved in J. S. Pike, *First Blows of the Civil War.*

1. CLAY'S RESOLUTIONS
January 29, 1850

(U. S. *Senate Journal,* 31st Congress, 1st Session, p. 118 ff.)

It being desirable, for the peace, concord, and harmony of the Union of these States, to settle and adjust amicably all existing questions of controversy between them arising out of the institution of slavery upon a fair, equitable and just basis: therefore,

1. *Resolved,* That California, with suitable boundaries, ought, upon her application to be admitted as one of the States of this Union, without the imposition by Congress of any restriction in respect to the exclusion or introduction of slavery within those boundaries.

2. *Resolved,* That as slavery does not exist by law, and is not likely to be introduced into any of the territory acquired by the United

States from the republic of Mexico, it is inexpedient for Congress to provide by law either for its introduction into, or exclusion from, any part of the said territory; and that appropriate territorial governments ought to be established by Congress in all of the said territory, not assigned as the boundaries of the proposed State of California, without the adoption of any restriction or condition on the subject of slavery.

3. *Resolved,* That the western boundary of the State of Texas ought to be fixed on the Rio del Norte, commencing one marine league from its mouth, and running up that river to the southern line of New Mexico; thence with that line eastwardly, and so continuing in the same direction to the line as established between the United States and Spain, excluding any portion of New Mexico, whether lying on the east or west of that river.

4. *Resolved,* That it be proposed to the State of Texas, that the United States will provide for the payment of all that portion of the legitimate and bona fide public debt of that State contracted prior to its annexation to the United States, and for which the duties on foreign imports were pledged by the said State to its creditors, not exceeding the sum of —— dollars, in consideration of the said duties so pledged having been no longer applicable to that object after the said annexation, but having thenceforward become payable to the United States; and upon the condition, also, that the said State of Texas shall, by some solemn and authentic act of her legislature or of a convention, relinquish to the United States any claim which it has to any part of New Mexico.

5. *Resolved,* That it is inexpedient to abolish slavery in the District of Columbia whilst that institution continues to exist in the State of Maryland, without the consent of that State, without the consent of the people of the District, and without just compensation to the owners of slaves within the District.

6. *But, resolved,* That it is expedient to prohibit, within the District, the slave trade in slaves brought into it from States or places beyond the limits of the District, either to be sold therein as merchandise, or to be transported to other markets without the District of Columbia.

7. *Resolved,* That more effectual provision ought to be made by law, according to the requirement of the constitution, for the restitution and delivery of persons bound to service or labor in any State, who may escape into any other State or Territory in the Union. And,

8. *Resolved,* That Congress has no power to promote or obstruct the trade in slaves between the slaveholding States; but that the admission or exclusion of slaves brought from one into another of them, depends exclusively upon their own particular laws.

2. THE TEXAS AND NEW MEXICO ACT
September 9, 1850

(*U. S. Statutes at Large,* Vol. IX, p. 446 ff.)

An Act proposing to the State of Texas the Establishment of her Northern and Western Boundaries, the Relinquishment by the said State of all Territory claimed by her exterior to said Boundaries, and of all her claims upon the United States, and to establish a territorial Government for New Mexico.

Be it enacted, That the following propositions shall be, and the same hereby are, offered to the State of Texas, which, when agreed to by the said State, and in an act passed by the general assembly, shall be binding and obligatory, upon the United States, and upon the said State of Texas: *Provided,* The said agreement by the said general assembly shall be given on or before the first day of December, eighteen hundred and fifty:

FIRST. The State of Texas will agree that her boundary on the north shall commence at the point at which the meridian of one hundred degrees west from Greenwich is intersected by the parallel of thirty-six degrees thirty minutes north latitude, and shall run from said point due west to the meridian of one hundred and three degrees west from Greenwich; thence her boundary shall run due south to the thirty-second degree of north latitude; thence on the said parallel of thirty-two degrees of north latitude to the Rio Bravo del Norte, and thence with the channel of said river to the Gulf of Mexico.

SECOND. The State of Texas cedes to the United States all her claim to territory exterior to the limits and boundaries which she agrees to establish by the first article of this agreement.

THIRD. The State of Texas relinquishes all claim upon the United States for liability of the debts of Texas, and for compensation or indemnity for the surrender to the United States of her ships, forts, arsenals, custom-houses, custom-house revenue, arms and munitions of war, and public buildings with their sites, which became the property of the United States at the time of the annexation.

FOURTH. The United States, in consideration of said establishment of boundaries, cession of claim to territory, and relinquishment of claims, will pay to the State of Texas the sum of ten millions of dollars in a stock bearing five per cent. interest, and redeemable at the end of fourteen years, the interest payable half-yearly at the treasury of the United States. . . .

Sec. 2. And that all that portion of the Territory of the United States bounded as follows (boundaries) . . . is hereby erected into a temporary government, by the name of the Territory of New Mexico: *Provided,* That nothing in this act contained shall be construed to inhibit the government of the United States from dividing said Territory into two or more Territories, in such manner and at such times as Congress shall deem convenient and proper, or from attaching any portion thereof to any other Territory or State: *And provided, further,* That, when admitted as a State, the said Territory, or any portion of the same, shall be received into the Union, with or without slavery, as their constitution may prescribe at the time of their admission.

3. THE UTAH ACT
(September 9, 1850)

(*U. S. Statutes at Large,* Vol. IX, p. 453 ff.)

An Act to establish a Territorial Government for Utah

Be it enacted, That all that part of the territory of the United States included within the following limits, to wit: bounded on the west by the State of California, on the north by the Territory of Oregon, and on the east by the summit of the Rocky Mountains, and on the south by the thirty-seventh parallel of north latitude, be, and the same is hereby, created into a temporary government, by the name of the Territory of Utah; and, when admitted as a State, the said Territory, or any portion of the same, shall be received into the Union, with or without slavery, as their constitution may prescribe at the time of their admission: *Provided,* That nothing in this act contained shall be construed to inhibit the government of the United States from dividing said Territory into two or more Territories, in such manner and at such times as Congress shall deem convenient and proper, or from attaching any portion of said Territory to any other State or Territory of the United States. . . .

4. FUGITIVE SLAVE ACT
(September 18, 1850)

(*U. S. Statutes at Large,* Vol. IX, p. 462 ff.)

An Act to amend, and supplementary to, the Act entitled "An Act respecting Fugitives from Justice, and Persons escaping from the Service of their Masters," approved—[February 12, 1793].

. . . SEC. 5. That it shall be the duty of all marshals and deputy marshals to obey and execute all warrants and precepts issued under the provisions of this act, when to them directed; and should any marshal or deputy marshal refuse to receive such warrant, or other process, when tendered, or to use all proper means diligently to execute the same, he shall, on conviction thereof, be fined in the sum of one thousand dollars, to the use of such claimant, . . . and after arrest of such fugitive, by such marshal or his deputy, or whilst at any time in his custody under the provisions of this act, should such fugitive escape, whether with or without the assent of such marshal or his deputy, such marshal shall be liable, on his official bond, to be prosecuted for the benefit of such claimant, for the full value of the service or labor of said fugitive in the State, Territory, or District whence he escaped: and the better to enable the said commissioners, when thus appointed, to execute their duties faithfully and efficiently, in conformity with the requirements of the Constitution of the United States and of this act, they are hereby authorized and empowered, within their counties respectively, to appoint, . . . any one or more suitable persons, from time to time, to execute all such warrants and other process as may be issued by them in the lawful performance of their respective duties; with authority to such commissioners, or the persons to be appointed by them, to execute process as aforesaid, to summon and call to their aid the bystanders, or *posse*

comitatus of the proper county, when necessary to ensure a faithful observance of the clause of the Constitution referred to, in conformity with the provisions of this act; and all good citizens are hereby commanded to aid and assist in the prompt and efficient execution of this law, whenever their services may be required, as aforesaid, for that purpose; and said warrants shall run, and be executed by said officers, any where in the State within which they are issued.

SEC. 6. That when a person held to service or labor in any State or Territory of the United States, has heretofore or shall hereafter escape into another State or Territory of the United States, the person or persons to whom such service or labor may be due, . . . may pursue and reclaim such fugitive person, either by procuring a warrant from some one of the courts, judges, or commissioners aforesaid, of the proper circuit, district, or county, for the apprehension of such fugitive from service or labor, or by seizing and arresting such fugitive, where the same can be done without process, and by taking, or causing such person to be taken, forthwith before such court, judge, or commissioner, whose duty it shall be to hear and determine the case of such claimant in a summary manner; and upon satisfactory proof being made, by deposition or affidavit, in writing, to be taken and certified by such court, judge, or commissioner, or by other satisfactory testimony, duly taken and certified by some court, . . . and with proof, also by affidavit, of the identity of the person whose service or labor is claimed to be due as aforesaid, that the person so arrested does in fact owe service or labor to the person or persons claiming him or her, in the State or Territory from which such fugitive may have escaped as aforesaid, and that said person escaped, to make out and deliver to such claimant, his or her agent or attorney, a certificate setting forth the substantial facts as to the service or labor due from such fugitive to the claimant, and of his or her escape from the State or Territory in which he or she was arrested, with authority to such claimant, . . . to use such reasonable force and restraint as may be necessary, under the circumstances of the case, to take and remove such fugitive person back to the State or Territory whence he or she may have escaped as aforesaid. In no trial or hearing under this act shall the testimony of such alleged fugitive be admitted in evidence; and the certificates in this and the first [fourth] section mentioned, shall be conclusive of the right of the person or persons in whose favor granted, to remove such fugitive to the State or Territory from which he escaped, and shall prevent all molestation of such person or persons by any process issued by any court, judge, magistrate, or other person whomsoever.

SEC. 7. That any persons who shall knowingly and willingly obstruct, hinder, or prevent such claimant, his agent or attorney, or any person or persons lawfully assisting him, her, or them, from arresting such a fugitive from service or labor, either with or without process as aforesaid, or shall rescue, or attempt to rescue, such fugitive from service or labor, from the custody of such claimant, . . . or other person or persons lawfully assisting as aforesaid, when so arrested, . . . or shall aid, abet, or assist such person so owing service or labor as aforesaid, directly or indirectly, to escape from such claimant, . . . or shall harbor or conceal such fugitive, so as to prevent the discovery and arrest of such person, after notice or knowledge of the fact that such person was a fugitive from service or labor . . . shall, for either of said offences, be subject to a fine not exceeding one thousand dollars, and imprisonment not exceeding six months . . . ; and shall moreover forfeit and pay, by way of civil damages to the party injured by such illegal conduct, the sum of one thousand dollars, for each fugitive so lost as aforesaid. . . .

SEC. 9. That, upon affidavit made by the claimant of such fugitive, . . . that he has reason to apprehend that such fugitive will be rescued by force from his or their possession before he can be taken beyond the limits of the State in which the arrest is made, it shall be the duty of the officer making the arrest to retain such fugitive in his custody, and to remove him to the State whence he fled, and there to deliver him to said claimant, his agent, or attorney. And to this end, the officer aforesaid is hereby authorized and required to employ so many persons as he may deem necessary to overcome such force, and to retain them in his service so long as circumstances may require. . . .

SEC. 10. That when any person held to service or labor in any State or Territory, or in the District of Columbia, shall escape therefrom, the party to whom such service or labor shall be due, . . . may apply to any court of record therein, . . . and make satisfactory proof to such court, . . . of the escape aforesaid, and that the person escaping owed service or labor to such party. Whereupon the court shall cause a record to be made of the matters so proved, and also a general description of the person so escaping, with such convenient certainty as may be; and a transcript of such record, . . . being produced in any other State, Territory, or district in which the person so escaping may be found, . . . shall be held and taken to be full and conclusive evidence of the fact of escape, and that the service or labor of the person escaping is due to the party in such record mentioned. And upon the production by the said party of other and further evidence if necessary, either oral or by affidavit, in addition to what is contained in the said record of the identity of the person escaping, he or she shall be delivered up to the claimant. And the said court, commissioner, judge, or other person authorized by this act to grant certificates to claimants of fugitives, shall, upon the production of the record and other evidences aforesaid, grant to such claimant a certificate of his right to take any such person identified and proved to be owing service or labor as aforesaid, which certificate shall authorize such claimant to seize or arrest and transport such person to the State or Territory from which he escaped . . .

5. ACT ABOLISHING THE SLAVE TRADE IN THE DISTRICT OF COLUMBIA

September 20, 1850

(*U. S. Statutes at Large*, Vol. IX, p. 467 ff.)

An Act to suppress the Slave Trade in the District of Columbia.

Be it enacted . . . , That from and after January 1, 1851, it shall not be lawful to bring into the District of Columbia any slave whatever, for the purpose of being sold, or for the purpose of being placed in depot, to be subsequently transferred to any other State or place to be sold as merchandize. And if any slave shall be brought into the said District by its owner, or by the authority or consent of its owner, contrary to the provisions of this act, such slave shall thereupon become liberated and free.

Sec. 2. That it shall and may be lawful for each of the corporations of the cities of Washington and Georgetown, from time to time, and as often as may be necessary, to abate, break up, and abolish any depot or place of confinement of slaves brought into the said District as merchandize, contrary to the provisions of this act, by such appropriate means as may appear to either of the said corporations expedient and proper. And the same power is hereby vested in the Levy Court of Washington county, if any attempt shall be made, within its jurisdictional limits, to establish a depot or place of confinement for slaves brought into the said District as merchandize for sale contrary to this act.

175. THE GEORGIA PLATFORM

1850

(A. H. Stephens, *The War Between the States*, Vol. II, app. B.)

Resolutions of a Convention held at Milledgeville, Georgia, to consider the Compromise of 1850. This platform was written by Charles J. Jenkins, and represented the point of view of the Union element in Georgia. See, R. H. Shryock, *Georgia and the Union in 1850;* U. B. Phillips, "Georgia and State Rights," Am. Hist. Assoc. *Reports*, 1901, Vol. II; and references to Doc. No. 176.

To the end that the position of this State may be clearly apprehended by her Confederates of the South and of the North, and that she may be blameless of all future consequences—

Be it resolved by the people of Georgia in Convention assembled, First. That we hold the American Union secondary in importance only to the rights and principles it was designed to perpetuate. That past associations, present fruition, and future prospects,

of the treaty under which the territory had been acquired from France.

It was proposed, therefore, to incorporate in the bill authorizing the formation of a State government, a provision requiring that the constitution of the new State should contain an article providing for the abolition of existing slavery, and prohibiting the further introduction of slaves.

This provision was vehemently and pertinaciously opposed, but finally prevailed in the House of Representatives by a decided vote. In the Senate it was rejected, and—in consequence of the disagreement between the two Houses—the bill was lost.

At the next session of Congress, the controversy was renewed with increased violence. It was terminated at length by a compromise. Missouri was allowed to come into the Union with slavery; but a section was inserted in the act authorizing her admission, excluding slavery forever from all the territory acquired from France, not included in the new State, lying north of 36° 30′. . . .

The question of the constitutionality of this prohibition was submitted by President Monroe to his cabinet. John Quincy Adams was then Secretary of State; John C. Calhoun was Secretary of War; William H. Crawford was Secretary of the Treasury; and William Wirt was Attorney-General. Each of these eminent gentlemen—three of them being from the slave states—gave a written opinion, affirming its constitutionality, and thereupon the act received the sanction of the President himself, also from a slave State.

Nothing is more certain in history than the fact that Missouri could not have been admitted as a slave State had not certain members from the free States been reconciled to the measure by the incorporation of this prohibition into the act of admission. Nothing is more certain than that this prohibition has been regarded and accepted by the whole country as a solemn compact against the extension of slavery into any part of the territory acquired from France lying north of 36° 30′, and not included in the new State of Missouri. The same act—let it be ever remembered—which authorized the formation of a constitution by the State, without a clause forbidding slavery, consecrated, beyond question and beyond honest recall, the whole remainder of the Territory to freedom and free institutions forever. For more than thirty years—during more than half our national existence under our present Constitution—this compact has been universally regarded and acted upon as inviolable American law. In conformity with it, Iowa was admitted as a free State and Minnesota has been organized as a free Territory.

It is a strange and ominous fact, well calculated to awaken the worst apprehensions and the most fearful forebodings of future calamities, that it is now deliberately proposed to repeal this prohibition, by implication or directly—the latter certainly the manlier way—and thus to subvert the compact, and allow slavery in all the yet unorganized territory.

We cannot, in this address, review the various pretenses under which it is attempted to cloak this monstrous wrong, but we must not altogether omit to notice one.

It is said that Nebraska sustains the same relations to slavery as did the territory acquired from Mexico prior to 1850, and that the pro-slavery clauses of the bill are necessary to carry into effect the compromise of that year.

No assertion could be more groundless. . . .

The statesmen whose powerful support carried the Utah and New Mexico acts never dreamed that their provisions would be ever applied to Nebraska. . . .

Here is proof beyond controversy that the principle of the Missouri act prohibiting slavery north of 36° 30′, far from being abrogated by the Compromise Acts, is expressly affirmed; and that the proposed repeal of this prohibition, instead of being an affirmation of the Compromise Acts, is a repeal of a very prominent provision of the most important act of the series. It is solemnly declared in the very Compromise Acts "that nothing herein contained shall be construed to impair or qualify" the prohibition of slavery north of 36° 30′; and yet in the face of this declaration, that sacred prohibition is said to be overthrown. Can presumption further go? To all who, in any way, lean upon these compromises, we commend this exposition.

These pretenses, therefore, that the territory covered by the positive prohibition of 1820, sustains a similar relation to slavery with that acquired from Mexico, covered by no prohibition except that of disputed constitutional or Mexican law, and that the Compromises of 1850 require the incorporation of the pro-slavery clauses of the Utah and New Mexico Bill in the Nebraska act, are mere inventions, designed to cover from public reprehension meditated bad faith. Were he living now, no one would be more forward, more eloquent, or more indignant in his denunciation of that bad faith, than Henry Clay, the foremost champion of both compromises. . . .

We confess our total inability properly to delineate the character or describe the consequences of this measure. Language fails to express the sentiments of indignation and abhorrence which it inspires; and no vision less penetrating and comprehensive than that of the All-Seeing can reach its evil issues. . . .

We appeal to the people. We warn you that the dearest interests of freedom and the Union are in imminent peril. Demagogues may tell you that the Union can be maintained only by submitting to the demands of slavery. We tell you that the Union can only be maintained by the full recognition of the just claims of freedom and man. The Union was formed to establish justice and secure the blessings of liberty. When it fails to accomplish these ends it will be worthless, and when it becomes worthless it cannot long endure.

We entreat you to be mindful of that fundamental maxim of Democracy—EQUAL RIGHTS AND EXACT JUSTICE FOR ALL MEN. Do not submit to become agents in extending legalized oppression and systematized injustice over a vast territory yet exempt from these terrible evils.

We implore Christians and Christian ministers to interpose. Their divine religion requires them to behold in every man a brother, and to labor for the advancement and regeneration of the human race.

Whatever apologies may be offered for the toleration of slavery in the States, none can be offered for its extension into Territories where it does not exist, and where that extension involves the repeal of ancient law and the violation of solemn compact. Let all protest, earnestly and emphatically, by correspondence, through the press, by memorials, by resolutions of public meetings and legislative bodies, and in whatever other mode may seem expedient, against this enormous crime.

For ourselves, we shall resist it by speech and vote, and with all the abilities which God has given us. Even if overcome in the impending struggle, we shall not submit. We shall go home to our constituents, erect anew the standard of freedom, and call on the people to come to the rescue of the country from the domination of slavery. We will not despair; for the cause of human freedom is the cause of God.

S. P. Chase
Charles Sumner
J. R. Giddings
Edward Wade
Gerritt Smith
Alexander De Witt.

180. THE KANSAS–NEBRASKA ACT
May 30, 1854

(*U. S. Statutes at Large*, Vol. X, p. 277 ff.)

This momentous measure organized two Territories, Kansas and Nebraska, divided by the fortieth parallel; it specifically repealed the Missouri Compromise, which had come to be regarded as sacrosanct by many people in the North, and recognized the principle of "squatter sovereignty." Probably no bill ever introduced to Congress was fraught with graver consequences. Senator Douglas, who sponsored the Bill, became anathema to a large part of the North; a group of Northern Democrats, headed by Chase, issued an "Appeal of the Independent Democrats", Doc. No. 179, calling for the organization of an anti-slavery party, and in February and July of 1854 the new Republican Party came into existence. The passage of the Kansas-Nebraska Bill with its provision for "popular sovereignty" led to a struggle for the control of Kansas that soon earned for that Territory the name of "Bleeding" Kansas. Lincoln, in his debates with Douglas, attacked the theory of popular sovereignty with such skill as seriously

to damage Douglas's popularity in the South and to earn for himself a national reputation. It was charged and long believed that Douglas, in his championship of this bill, was actuated solely by ambition for the Presidency. It is probable, however, that Douglas sincerely believed that the territory opened up by the Kansas-Nebraska bill would become, because of its geography and climate, free territory. He was also profoundly interested in the construction of a trans-continental railway along a Northern route, and anxious therefore to throw open the region west of Iowa to settlement. The literature on the Kansas-Nebraska Act is extensive. See, P. O. Ray, *The Repeal of the Missouri Compromise;* S. B. Dixon, *A True History of the Missouri Compromise and Its Repeal;* F. H. Hodder, "Genesis of the Kansas-Nebraska Act," Wisconsin Hist. Soc. *Proceedings,* 1912; J. F. Rhodes, *History of the United States,* Vol. I, ch. v; A. Johnson, *S. A. Douglas,* chs. viii-ix; A. J. Beveridge, *Abraham Lincoln,* Vol. II, chs. iii-iv; G. F. Milton, *The Eve of the Conflict,* ch. vii. ff.

An Act to Organize the Territories of Nebraska and Kansas.

Be it enacted . . . , That all that part of the territory of the United States included within the following limits, except such portions thereof as are hereinafter expressly exempted from the operations of this act, to wit: beginning at a point in the Missouri River where the fortieth parallel of north latitude crosses the same; thence west on said parallel to the east boundary of the Territory of Utah, on the summit of the Rocky Mountains; thence on said summit northward to the forty-ninth parallel of north latitude; thence east on said parallel to the western boundary of the territory of Minnesota; thence southward on said boundary to the Missouri River; thence down the main channel of said river to the place of beginning, be, and the same is hereby, created into a temporary government by the name of the Territory of Nebraska; and when admitted as a State or States, the said Territory, or any portion of the same, shall be received into the Union with or without slavery, as their constitution may prescribe at the time of their admission: . . .

SEC. 14. *And be it further enacted,* . . . That the Constitution, and all laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Territory of Nebraska as elsewhere within the United States, except the eighth section of the act preparatory to the admission of Missouri into the Union, approved March 6, 1820, which, being inconsistent with the principle of non-intervention by Congress with slavery in the States and Territories, as recognized by the legislation of eighteen hundred and fifty, commonly called the Compromise Measures, is hereby declared inoperative and void; 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: *Provided,* That nothing herein contained shall be construed to revive or put in force any law or regulation which may have existed prior to the act of March 6, 1820, either protecting, establishing, prohibiting, or abolishing slavery. . . .

SEC. 19. *And be it further enacted,* That all that part of the Territory of the United States included within the following limits, except such portions thereof as are hereinafter expressly exempted from the operations of this act, to wit, beginning at a point on the western boundary of the State of Missouri, where the thirty-seventh parallel of north latitude crosses the same; thence west on said parallel to the eastern boundary of New Mexico; thence north on said boundary to latitude thirty-eight; thence following said boundary westward to the east boundary of the Territory of Utah, on the summit of the Rocky Mountains; thence northward on said summit to the fortieth parallel of latitude; thence east on said parallel to the western boundary of the State of Missouri; thence south with the western boundary of said State to the place of beginning, be, and the same is hereby, created into a temporary government by the name of the Territory of Kansas; and when admitted as a State or States, the said Territory, or any portion of the same, shall be received into the Union with or without slavery, as their constitution may prescribe at the time of their admission: . . .

181. THE OSTEND MANIFESTO

October 18, 1854

(*U. S. 33d Congress, 2d Session,* House Executive Doc. No. 93)

In August, 1854, Secretary of State Marcy instructed our minister to Spain, Pierre Soulé, to negotiate for the purchase of Cuba, and suggested a consultation with our ministers to France and England, Mr. Mason and Mr. Buchanan, for the purpose of considering European opposition to such a purchase. The three ministers accordingly met at Ostend, Belgium, and drew up the notorious Ostend Manifesto. The report was repudiated by Marcy, and Soulé resigned his mission. Buchanan's participation in the Manifesto recommended him to the Southern Democrats as a suitable candidate for the Presidency. See, S. F. Bemis, ed. *American Secretaries of State,* Vol. VI, p. 183 ff.; R. F. Nichols, *Franklin Pierce,* chs, xlvi-xlviii, and appendix; S. Webster, "Mr. Marcy, the Cuban Question and the Ostend Manifesto," *Pol. Sci. Quart.,* Vol. VIII; A. A. Ettinger, *Mission to Spain of Pierre Soulé, 1853–1855.*

Aix la Chapelle, October 18, 1854.

Sir:—The undersigned, in compliance with the wish expressed by the President in the several confidential despatches you have addressed to us, respectively, to that effect, have met in conference, first at Ostend, in Belgium, on the 9th, 10th, and 11th instant, and then at Aix la Chapelle, in Prussia, on the days next following, up to the date hereof. . . .

We have arrived at the conclusion, and are thoroughly convinced, that an immediate and earnest effort ought to be made by the government of the United States to purchase Cuba from Spain at any price for which it can be obtained, not exceeding the sum of $—.

The proposal should, in our opinion, be made in such a manner as to be presented through the necessary diplomatic forms to the Supreme Constituent Cortes about to assemble. On this momentous question, in which the people both of Spain and the United States are so deeply interested, all our proceedings ought to be open, frank, and public. They should be of such a character as to challenge the approbation of the world.

We firmly believe that, in the progress of human events, the time has arrived when the vital interests of Spain are as seriously involved in the sale, as those of the United States in the purchase, of the island and that the transaction will prove equally honorable to both nations.

Under these circumstances we cannot anticipate a failure, unless possibly through the malign influence of foreign powers who possess no right whatever to interfere in the matter.

We proceed to state some of the reasons which have brought us to this conclusion, and, for the sake of clearness, we shall specify them under two distinct heads:

1. The United States ought, if practicable, to purchase Cuba with as little delay as possible.

2. The probability is great that the government and cortes of Spain will prove willing to sell it, because this would essentially promote the highest and best interests of the Spanish people.

Then, 1. It must be clear to every reflecting mind that, from the peculiarity of its geographical position, and the considerations attendant on it, Cuba is as necessary to the North American republic as any of its present members, and that it belongs naturally to that great family of States of which the Union is the providential nursery. . . .

The natural and main outlet to the products of this entire population, the highway of their direct intercourse with the Atlantic and the Pacific States, can never be secure, but must ever be endangered whilst Cuba is a dependency of a distant power in whose possession it has proved to be a source of constant annoyance and embarrassment to their interests.

Indeed, the Union can never enjoy repose, nor possess reliable security, as long as Cuba is not embraced within its boundaries.

Its immediate acquisition by our government is of paramount importance, and we cannot doubt but that it is a consummation devoutly wished for by its inhabitants.

The intercourse which its proximity to our

blundering mismanagement of our foreign relations.

14. Therefore, to remedy existing evils, and prevent the disastrous consequences otherwise resulting therefrom, we would build up the "American Party" upon the principles herein before stated. . . .

184. CONSTITUTION OF THE COMMITTEE OF VIGILANTES OF SAN FRANCISCO
May 15, 1856

(*American State Trials,* ed. J. D. Lawson, Vol. XV, p. 65 ff.)

The influx of lawless elements to California at the time of the Gold Rush had led, in 1851, to the organization of Vigilance Committees who took the law into their own hands. A new outbreak of lawlessness, together with the apparent breakdown of the machinery of law-enforcement, led in 1856 to the organization of the famous San Francisco Committee of Vigilantes which H. H. Bancroft designated as "the greatest demonstration in the cause of civil righteousness, without subversion of the law or of the government that the world has ever seen." On the work of the Committee, see, H. H. Bancroft, *Popular Tribunals,* Vol. II; F. Tuthill, *History of California.* For the earlier Vigilante organization, see M. F. Williams, *History of the San Francisco Vigilance Committee of 1851,* University of California Publications in History, Vol. XII. For the workings of vigilante committees elsewhere, see N. P. Langford, *Vigilante Days and Ways;* T. J. Dimsdale, *Vigilantes of Montana.* The records of the Trial of criminals by the Vigilante Committee of 1856 can be found in *American State Trials,* Vol. XV.

Whereas, it has become apparent to the citizens of San Francisco that there is no security for life and property, either under the regulations of society, as it at present exists, or under the laws as now administered; and that by the association together of bad characters, our ballot boxes have been stolen and others substituted, or stuffed with votes that were not polled, and thereby our elections nullified, our dearest rights violated, and no other method left by which the will of the people can be manifested; therefore, the citizens whose names are hereunto attached, do unite themselves into an association for maintenance of peace and good order of society—the preservation of our lives and property, and to insure that our ballot boxes shall hereafter express the actual and unforged will of the majority of our citizens; and we do bind ourselves, each unto the other, by a solemn oath, to do and perform every just and lawful act for the maintenance of law and order, and to sustain the laws when faithfully and properly administered; but we are determined that no thief, burglar, incendiary, assassin, ballot-box stuffer, or other disturbers of the peace, shall escape punishment, either by the quibbles of the law, the insecurity of prisons, the carelessness or corruption of police, or a laxity of those who pretend to administer justice; and to secure the objects of this association, we do hereby agree:

1st. That the name and style of this association shall be the Committee of Vigilance, for the protection of the ballot-box, the lives, liberty and property of the citizens and residents of the City of San Francisco.

2d. That there shall be rooms for the deliberations of the Committee, at which there shall be some one or more members of the Committee appointed for that purpose, in constant attendance at all hours of the day and night, to receive the report of any member of the association, or of any other person or persons of any act of violence done to the person or property of any citizen of San Francisco; and if, in the judgment of the member or members of the Committee present, it be such an act as justifies or demands the interference of this Committee, either in aiding in the execution of the laws, or the prompt and summary punishment of the offender, the Committee shall be at once assembled for the purpose of taking such action as the majority of them, when assembled, shall determine upon.

3d. That it shall be the duty of any member or members of the Committee on duty at the committee rooms, whenever a general assemblage of the Committee be deemed necessary, to cause a call to be made, in such a manner as shall be found advisable.

4th. That whereas, an Executive Committee, has been chosen by the General Committee, it shall be the duty of said Executive Committee to deliberate and act upon all important questions, and decide upon the measures necessary to carry out the objects for which this association was formed.

5th. That whereas, this Committee has been organized into subdivisions, the Executive Committee shall have the power to call, when they shall so determine, upon a board of delegates, to consist of three representatives from each division, to confer with them upon matters of vital importance.

6th. That all matters of detail and government shall be embraced in a code of By-Laws.

7th. That the action of this body shall be entirely and vigorously free from all consideration of, or participation in the merits or demerits, or opinion or acts, of any and all sects, political parties, or sectional divisions in the community; and every class of orderly citizens, of whatever sect, party, or nativity, may become members of this body. No discussion of political, sectional, or sectarian subjects shall be allowed in the rooms of the association.

8th. That no persons, accused before this body, shall be punished until after fair and impartial trial and conviction.

9th. That whenever the General Committee have assembled for deliberation, the decision of the majority, upon any question that may be submitted to them by the Executive Committee, shall be binding upon the whole; provided nevertheless, that when the delegates are deliberating upon the punishment to be awarded to any criminals, no vote inflicting the death penalty shall be binding, unless passed by two-thirds of those present and entitled to vote.

10th. That all good citizens shall be eligible for admission to this body, under such regulations as may be prescribed by a committee on qualifications; and if any unworthy persons gain admission, they shall on due proof be expelled; and believing ourselves to be executors of the will of the majority of our citizens, we do pledge our sacred honor, to defend and sustain each other in carrying out the determined action of this committee, at the hazard of our lives and our fortunes.

185. DRED SCOTT v. SANDFORD
19 Howard, 393
1857

Error to the U.S. circuit court for the district of Missouri. In 1834 Dred Scott, a negro slave, was taken by his master from Missouri, a slave state, to Illinois, a free state, and hence to Wisconsin Territory where slavery was forbidden by the Missouri Compromise of 1820. Subsequently Scott was brought back to Missouri, and in 1846 he began suit to obtain his freedom, on the ground that he had become free when taken into free territory. The case was eventually brought on appeal to the Supreme Court. Three major questions were involved: whether Scott was a citizen of the State of Missouri, so as to give the Federal courts jurisdiction; whether he had been set free by his sojourn in the free state of Illinois; whether he had been set free by his sojourn in the free Territory of Wisconsin, e.g., whether the Missouri Compromise was constitutional. The Court ruled that Scott was not a citizen of the United States or of the State of Missouri and therefore not competent to sue in the Federal courts. Having thus refused jurisdiction, the court went on to pass on the other questions presented, all of the judges giving separate opinions. Of the dissenting opinions, that by Justice Curtis dealt most elaborately with the question of citizenship.

This case, probably the most famous in the history of the Court, has been the subject of an extensive literature. See the discussion of the case and bibliographical notes in Warren, *Supreme Court,* Vol. II, ch. xxvi; C. B. Swisher, *R. B. Taney;* Hodder, "Some Phases of the Dred Scott Case," *Miss. Valley Hist. Rev.* Vol. XVI; Corwin, "Dred Scott Decision in the Light of Contemporary Legal Doctrines," A. H. R., Vol. XVII; Cattarall, "Some Antecedents of the Dred Scott Case," A. H. R., Vol. XXX; Cohn, "Dred Scott Decision in the Light of Later Events," 46 Am. Law Rev. 548.

TANEY, C. J. . . . There are two leading questions presented by the record:

1. Had the Circuit Court of the United States jurisdiction to hear and determine the case between these parties? And,

2. If it had jurisdiction, is the judgment it has given erroneous or not?

The plaintiff in error, who was also the plaintiff in the court below, was, with his wife and children, held as slaves by the defendant, in the State of Missouri, and he brought this action in the Circuit Court of the United States for that district, to assert the title of himself and his family to freedom.

The declaration is . . . that he and the defendant are citizens of different States; that is, that he is a citizen of Missouri, and the defendant a citizen of New York.

The defendant pleaded in abatement to the jurisdiction of the court, that the plaintiff was not a citizen of the State of Missouri, as alleged in his declaration, being a negro of African descent whose ancestors were of pure African blood, and who were brought into this country and sold as slaves.

To this plea the plaintiff demurred, and the defendant joined in demurrer. . . .

Before we speak of the pleas in bar, it will be proper to dispose of the questions which have arisen on the plea in abatement.

That plea denies the right of the plaintiff to sue in a court of the United States, for the reasons therein stated.

If the question raised by it is legally before us, and the court should be of opinion that the facts stated in it disqualify the plaintiff from becoming a citizen, in the sense in which that word is used in the Constitution of the United States, then the judgment of the Circuit Court is erroneous, and must be reversed. . . .

The question to be decided is, whether the facts stated in the plea are sufficient to show that the plaintiff is not entitled to sue as a citizen in a court of the United States.

This is certainly a very serious question, and one that now for the first time has been brought for decision before this court. But it is brought here by those who have a right to bring it, and it is our duty to meet it and decide it.

The question is simply this: Can a negro, whose ancestors were imported into this country, and sold as slaves, become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled to all the rights, and privileges, and immunities, guarantied by that instrument to the citizen? One of which rights is the privilege of suing in a court of the United States in the cases specified in the Constitution.

It will be observed, that the plea applies to that class of persons only whose ancestors were negroes of the African race, and imported into this country, and sold and held as slaves. The only matter in issue before the court, therefore, is, whether the descendants of such slaves, when they shall be emancipated, or who are born of parents who had become free before their birth, are citizens of a State, in the sense in which the word citizen is used in the Constitution of the United States. And this being the only matter in dispute on the pleadings, the court must be understood as speaking in this opinion of that class only, that is of persons who are the descendants of Africans who were imported into this country and sold as slaves. . . .

We proceed to examine the case as presented by the pleadings.

The words "people of the United States" and "citizens" are synonymous terms, and mean the same thing. They both describe the political body who, according to our republican institutions, form the sovereignty, and who hold the power and conduct the government through their representatives. They are what we familiarly call the "sovereign people," and every citizen is one of this people, and a constituent member of this sovereignty. The question before us is, whether the class of persons described in the plea in abatement compose a portion of this people, and are constituent members of this sovereignty? We think they are not, and that they are not included, and were not intended to be included, under the word "citizens" in the Constitution, and can, therefore, claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that time considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the government might choose to grant them. . . .

In discussing this question, we must not confound the rights of citizenship which a state may confer within its own limits, and

the rights of citizenship as a member of the Union. It does not by any means follow, because he has all the rights and privileges of a citizen of a State, that he must be a citizen of the United States. He may have all of the rights and privileges of the citizen of a State, and yet not be entitled to the rights and privileges of a citizen in any other State. For, previous to the adoption of the Constitution of the United States, every State had the undoubted right to confer on whomsoever it pleased the character of a citizen, and to endow him with all its rights. But this character, of course, was confined to the boundaries of the State, and gave him no rights or privileges in other States beyond those secured to him by the laws of nations and the comity of States. Nor have the several States surrendered the power of conferring these rights and privileges by adopting the Constitution of the United States. Each State may still confer them upon an alien, or any one it thinks proper, or upon any class or description of persons; yet he would not be a citizen in the sense in which that word is used in the Constitution of the United States, nor entitled to sue as such in one of its courts, nor to the privileges and immunities of a citizen in the other States. The rights which he would acquire would be restricted to the State which gave them. . . .

It is very clear, therefore, that no State can, by any Act or law of its own, passed since the adoption of the Constitution, introduce a new member into the political community created by the Constitution of the United States. It cannot make him a member of this community by making him a member of its own. And for the same reason it cannot introduce any person, or description of persons, who were not intended to be embraced in this new political family, which the Constitution brought into existence, but were intended to be excluded from it.

The question then arises, whether the provisions of the Constitution, in relation to the personal rights and privileges to which the citizen of a State should be entitled, embraced the negro African race, at that time in this country, or who might afterwards be imported, who had then or should afterwards be made free in any State; and to put it in the power of a single State to make him a citizen of the United States, and endue him with the full rights of citizenship in every other State without their consent. Does the Constitution of the United States act upon him whenever he shall be made free under the laws of a State, and raised there to the rank of a citizen, and immediately clothe him with all the privileges of a citizen in every other State, and in its own courts?

The court think the affirmative of these propositions cannot be maintained. And if it cannot, the plaintiff in error could not be a citizen of the State of Missouri, within the meaning of the Constitution of the United States, and, consequently, was not entitled to sue in its courts.

It is true, every person, and every class and description of persons, who were at the time of the adoption of the Constitution recognized as citizens in the several States, became also citizens of this new political body; but none other; it was formed by them, and for them and their posterity, but for no one else. And the personal rights and privileges guarantied to citizens of this new sovereignty were intended to embrace those only who were then members of the several state communities, or who should afterwards, by birthright or otherwise, become members, according to the provisions of the Constitution and the principles on which it was founded. . . .

It becomes necessary, therefore, to determine who were citizens of the several States when the Constitution was adopted. And in order to do this, we must recur to the governments and institutions of the thirteen Colonies, when they separated from Great Britain and formed new sovereignties. . . . We must inquire who, at that time, were recognized as the people or citizens of a State. . . .

In the opinion of the court, the legislation and histories of the times, and the language used in the Declaration of Independence, show, that neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in that memorable instrument.

It is difficult at this day to realize the state of public opinion in relation to that unfortunate race, which prevailed in the civilized and enlightened portions of the world at the time of the Declaration of Independence, and when

the Constitution of the United States was framed and adopted. . . .

They had for more than a century before been regarded as beings of an inferior order; and altogether unfit to associate with the white race, either in social or political relations; and so far inferior that they had no rights which the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his benefit. . . . This opinion was at that time fixed and universal in the civilized portion of the white race. It was regarded as an axiom in morals as well as in politics, which no one thought of disputing, or supposed to be open to dispute; and men in every grade and position in society daily and habitually acted upon it in their private pursuits, as well as in matters of public concern, without doubting for a moment the correctness of this opinion. . . .

The legislation of the different Colonies furnishes positive and undisputable proof of this fact. . . .

The language of the Declaration of Independence is equally conclusive. . . .

This state of public opinion had undergone no change when the Constitution was adopted, as is equally evident from its provisions and language. . . .

But there are two clauses in the Constitution which point directly and specifically to the negro race as a separate class of persons, and show clearly that they were not regarded as a portion of the people or citizens of the Government then formed.

One of these clauses reserves to each of the thirteen States the right to import slaves until the year 1808, if he thinks it proper. And the importation which it thus sanctions was unquestionably of persons of the race of which we are speaking, as the traffic in slaves in the United States had always been confined to them. And by the other provision the States pledge themselves to each other to maintain the right of property of the master, by delivering up to him any slave who may have escaped from his service, and be found within their respective territories. . . . And these two provisions show, conclusively, that neither the description of persons therein referred to, nor their descendants, were embraced in any of the other provisions of the Constitution; for certainly these two clauses were not intended to confer on them or their posterity the blessings of liberty, or any of the personal rights so carefully provided for the citizen. . . .

Indeed, when we look to the condition of this race in the several States at the time, it is impossible to believe that these rights and privileges were intended to be extended to them. . . .

The legislation of the States therefore shows, in a manner not to be mistaken, the inferior and subject condition of that race at the time the Constitution was adopted, and long afterwards, throughout the thirteen States by which that instrument was framed; and it is hardly consistent with the respect due to these States, to suppose that they regarded at that time, as fellow-citizens and members of the sovereignty, a class of beings whom they had thus stigmatized; . . . More especially, it cannot be believed that the large slave-holding States regarded them as included in the word "citizens," or would have consented to a constitution which might compel them to receive them in that character from another State. For if they were so received, and entitled to the privileges and immunities of citizens, it would exempt them from the operation of the special laws and from the police regulations which they considered to be necessary for their own safety. . . . And all of this would be done in the face of the subject race of the same color, both free and slaves, inevitably producing discontent and insubordination among them, and endangering the peace and safety of the State. . . .

But it is said that a person may be a citizen, and entitled to that character, although he does not possess all the rights which may belong to other citizens; as, for example, the right to vote, or to hold particular offices; and that yet, when he goes into another State, he is entitled to be recognized there as a citizen, although the State may measure his rights by the rights which it allows to persons of a like character or class, resident in the State, and refuse to him the full rights of citizenship.

This argument overlooks the language of the provision in the Constitution of which we are speaking.

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. . . .

So, too, a person may be entitled to vote by the law of the State, who is not a citizen even of the State itself. And in some of the States of the Union foreigners not naturalized are allowed to vote. And the State may give the right to free negroes and mulattoes, but that does not make them citizens of the State, and still less of the United States. And the provision in the Constitution giving privileges and immunities in other States, does not apply to them.

Neither does it apply to a person who, being the citizen of a State, migrates to another State. For then he becomes subject to the laws of the State in which he lives, and he is no longer a citizen of the State from which he removed. And the State in which he resides may then, unquestionably, determine his *status* or condition, and place him among the class of persons who are not recognized as citizens, but belong to an inferior and subject race; and may deny him the privileges and immunities enjoyed by its citizens. . . .

. . . But if he ranks as a citizen of the State to which he belongs, within the meaning of the Constitution of the United States, then, whenever he goes into another State, the Constitution clothes him, as to the rights of person, with all the privileges and immunities which belong to citizens of the State. And if persons of the African race are citizens of a state, and of the United States, they would be entitled to all of these privileges and immunities in every State, and the State could not restrict them; for they would hold these privileges and immunities, under the paramount authority of the Federal Government, and its courts would be bound to maintain and enforce them, the Constitution and laws of the State to the contrary notwithstanding. . . .

And upon a full and careful consideration of the subject, the court is of opinion that, upon the facts stated in the plea in abatement, Dred Scott was not a citizen of Missouri within the meaning of the Constitution of the United States, and not entitled as such to sue in its courts; and, consequently, that the Circuit Court had no jurisdiction of the case, and that the judgment on the plea in abatement is erroneous. . . .

We proceed, therefore, to inquire whether the facts relied on by the plaintiff entitled him to his freedom. . . .

In considering this part of the controversy, two questions arise: 1st. Was he, together with his family, free in Missouri by reason of the stay in the territory of the United States hereinbefore mentioned? And 2d, If they were not, is Scott himself free by reason of his removal to Rock Island, in the State of Illinois, as stated in the above admissions?

We proceed to examine the first question.

The Act of Congress, upon which the plaintiff relies, declares that slavery and involuntary servitude, except as a punishment for crime, shall be forever prohibited in all that part of the territory ceded by France, under the name of Louisiana, which lies north of thirty-six degrees thirty minutes north latitude, and not included within the limits of Missouri. And the difficulty which meets us at the threshold of this part of the inquiry is, whether Congress was authorized to pass this law under any of the powers granted to it by the Constitution; for if the authority is not given by that instrument, it is the duty of this court to declare it void and inoperative, and incapable of conferring freedom upon any one who is held as a slave under the laws of any one of the States.

The counsel for the plaintiff has laid much stress upon that article in the Constitution which confers on Congress the power "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States;" but, in the judgment of the court, that provision has no bearing on the present controversy, and the power there given, whatever it may be, is confined, and was intended to be confined, to the territory which at that time belonged to, or was claimed by, the United States, and was within their boundaries as settled by the treaty with Great Britain, and can have no influence upon a territory afterwards acquired from a foreign Government. It was a special provision for a known and particular territory, and to meet a present emergency, and nothing more. . . .

If this clause is construed to extend to territory acquired by the present Government from a foreign nation, outside of the limits of any charter from the British Government to a colony, it would be difficult to say, why it was deemed necessary to give the Govern-

ment the power to sell any vacant lands belonging to the sovereignty which might be found within it; and if this was necessary, why the grant of this power should precede the power to legislate over it and establish a Government there; and still more difficult to say, why it was deemed necessary so specially and particularly to grant the power to make needful rules and regulations in relation to any personal or movable property it might acquire there. For the words, *other property* necessarily, by every known rule of interpretation, must mean property of a different description from territory or land. And the difficulty would perhaps be insurmountable in endeavoring to account for the last member of the sentence, which provides that "nothing in this Constitution shall be so construed as to prejudice any claims of the United States or any particular State," or to say how any particular State could have claims in or to a territory ceded by a foreign Government, or to account for associating this provision with the preceding provisions of the clause, with which it would appear to have no connection. . . .

But the power of Congress over the person or property of a citizen can never be a mere discretionary power under our Constitution and form of Government. The powers of the Government and the rights and privileges of the citizen are regulated and plainly defined by the Constitution itself. And when the Territory becomes a part of the United States, the Federal Government enters into possession in the character impressed upon it by those who created it. It enters upon it with its powers over the citizen strictly defined, and limited by the Constitution, from which it derives its own existence, and by virtue of which alone it continues to exist and act as a Government and sovereignty. It has no power of any kind beyond it; and it cannot, when it enters a Territory of the United States, put off its character, and assume discretionary or despotic powers which the Constitution has denied to it. It cannot create for itself a new character separated from the citizens of the United States, and the duties it owes them under the provisions of the Constitution. The Territory being a part of the United States, the Government and the citizen both enter it under the authority of the Constitution, with their respective rights defined and marked out; and the Federal Government can exercise no power over his person or property, beyond what that instrument confers, nor lawfully deny any right which it has reserved. . . .

The rights of private property have been guarded with equal care. Thus the rights of property are united with the rights of person, and placed on the same ground by the fifth amendment to the Constitution. . . . An Act of Congress which deprives a person of the United States of his liberty or property merely because he came himself or brought his property into a particular Territory of the United States, and who had committed no offense against the laws, could hardly be dignified with the name of due process of law. . . .

And this prohibition is not confined to the States, but the words are general, and extend to the whole territory over which the Constitution gives it power to legislate, including those portions of it remaining under territorial government, as well as that covered by States. It is a total absence of power everywhere within the dominion of the United States, and places the citizens of a territory, so far as these rights are concerned, on the same footing with citizens of the States, and guards them as firmly and plainly against any inroads which the general government might attempt, under the plea of implied or incidental powers. And if Congress itself cannot do this—if it is beyond the powers conferred on the Federal Government—it will be admitted, we presume, that it could not authorize a territorial government to exercise them. It could confer no power on any local government, established by its authority, to violate the provisions of the Constitution.

It seems, however, to be supposed, that there is a difference between property in a slave and other property, and that different rules may be applied to it in expounding the Constitution of the United States. And the laws and usages of nations, and the writings of eminent jurists upon the relation of master and slave and their mutual rights and duties, and the powers which governments may exercise over it, have been dwelt upon in the argument.

But . . . if the Constitution recognizes the right of property of the master in a slave, and makes no distinction between that description of property and other property owned by a citizen, no tribunal, acting under the authority of the United States, whether it be legislative, executive, or judicial, has a right to draw such a distinction, or deny to it the benefit of the provisions and guarantees which have been provided for the protection of private property against the encroachments of the Government.

Now . . . the right of property in a slave is distinctly and expressly affirmed in the Constitution. The right to traffic in it, like an ordinary article of merchandise and property, was guaranteed to the citizens of the United States, in every State that might desire it, for twenty years. And the Government in express terms is pledged to protect it in all future time, if the slave escapes from his owner. . . . And no word can be found in the Constitution which gives Congress a greater power over slave property, or which entitles property of that kind to less protection than property of any other description. The only power conferred is the power coupled with the duty of guarding and protecting the owner in his rights.

Upon these considerations, it is the opinion of the court that the Act of Congress which prohibited a citizen from holding and owning property of this kind in the territory of the United States north of the line therein mentioned, is not warranted by the Constitution, and is therefore void; and that neither Dred Scott himself, nor any of his family, were made free by being carried into this territory; even if they had been carried there by the owner, with the intention of becoming a permanent resident. . . .

Upon the whole, therefore, it is the judgment of this court, that it appears by the record before us that the plaintiff in error is not a citizen of Missouri, in the sense in which that word is used in the Constitution; and that the Circuit Court of the United States, for that reason, had no jurisdiction in the case, and could give no judgment in it.

Its judgment for the defendant must, consequently, be reversed, and a mandate issued directing the suit to be dismissed for want of jurisdiction.

WAYNE, J., NELSON, J., GRIER, J., DANIEL, J., CAMPBELL, J., AND CATRON, J., filed separate concurring opinions. MCLEAN, J. and CURTIS, J. dissented.

186. LINCOLN'S HOUSE DIVIDED SPEECH
Springfield, Illinois, June 17, 1858

(*Writings of Abraham Lincoln,* Constitutional ed., Vol. III, p. 1 ff.)

This speech was delivered at the close of the Republican State Convention, in the Hall of the House of Representatives. Though the "house divided" phrase had been used frequently before, it was this speech of Lincoln's that gave currency and familiarity to the phrase and the idea. For an analysis of the speech and a description of the setting, see A. Beveridge, *Abraham Lincoln,* Vol. II, p. 575 ff.

MR. PRESIDENT AND GENTLEMEN OF THE CONVENTION: If we could first know where we are, and whither we are tending, we could better judge what to do, and how to do it. We are now far into the fifth year since a policy was initiated with the avowed object and confident promise of putting an end to slavery agitation. Under the operation of that policy, that agitation has not only not ceased, but has constantly augmented. In my opinion, it will not cease until a crisis shall have been reached and passed. "A house divided against itself cannot stand." I believe this government cannot endure permanently half slave and half free. I do not expect the Union to be dissolved; I do not expect the house to fall; but I do expect it will cease to be divided. It will become all one thing, or all the other. Either the opponents of slavery will arrest the further spread of it, and place it where the public mind shall rest in the belief that it is in the course of ultimate extinction, or its advocates will push it forward till it shall become alike lawful in all the States, old as well as new, North as well as South.

Have we no tendency to the latter condition?

Let any one who doubts, carefully contemplate that now almost complete legal combination—piece of machinery, so to speak—compounded of the Nebraska doctrine and the Dred Scott decision. Let him consider, not only what work the machinery is adapted

No, my friends, that will never be the verdict of our people. Therefore, we care not upon what lines the battle is fought. If they say bimetallism is good, but that we cannot have it until other nations help us, we reply, that instead of having a gold standard because England has, we will restore bimetallism, and then let England have bimetallism because the United States has it. If they dare to come out in the open field and defend the gold standard as a good thing, we will fight them to the uttermost. Having behind us the producing masses of this nation and the world, supported by the commercial interests, the laboring interests and the toilers everywhere, we will answer their demand for a gold standard by saying to them: You shall not press down upon the brow of labor this crown of thorns, you shall not crucify mankind upon a cross of gold.

343. PLESSY v. FERGUSON

163 U. S. 537
1896

This case wrote the "separate but equal" doctrine into American constitutional law. It was, in effect, reversed in Brown *v.* Topeka, Doc. no. 617. See Vann Woodward, *The Strange Career of Jim Crow;* Gilbert Stephenson, *Race Distinctions in American Law;* Rayford Logan, *Negro in American Life and Thought 1877–1901;* and refs. to Doc. 617.

BROWN, J. This case turns upon the constitutionality of an act of the general assembly of the state of Louisiana, passed in 1890, providing for separate railway carriages for the white and colored races. . . .

The constitutionality of this act is attacked upon the ground that it conflicts both with the 13th Amendment of the Constitution, abolishing slavery, and the 14th Amendment, which prohibits certain restrictive legislation on the part of the states.

1. That it does not conflict with the 13th Amendment, which abolished slavery and involuntary servitude, except as a punishment for crime, is too clear for argument. . . .

A statute which implies merely a legal distinction between the white and colored races—a distinction which is founded in the color of the two races, and which must always exist so long as white men are distinguished from the other race by color—has no tendency to destroy the legal equality of the two races, or re-establish a state of involuntary servitude. Indeed, we do not understand that the 13th Amendment is strenuously relied upon by the plaintiff in error in this connection. . . .

The object of the amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political, equality, or a commingling of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring their separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power. The most common instance of this is connected with the establishment of separate schools for white and colored children, which have been held to be a valid exercise of the legislative power even by courts of states where the political rights of the colored race have been longest and most earnestly enforced. . . .

It is claimed by the plaintiff in error that, in any mixed community, the reputation of belonging to the dominant race, in this instance the white race is *property*, in the same sense that a right of action, or of inheritance, is property. Conceding this to be so, for the purposes of this case, we are unable to see how this statute deprives him of, or in any way affects his right to, such property. If he be a white man and assigned to a colored coach, he may have his action for damages against the company for being deprived of his so-called property. Upon the other hand, if he be a colored man and be so assigned, he has been deprived of no property, since he is not lawfully entitled to the reputation of being a white man. . . .

So far, then, as a conflict with the 14th Amendment is concerned, the case reduces itself to the question whether the statute of Louisiana is a reasonable regulation, and with respect to this there must necessarily be a large discretion on the part of the legislature. In determining the question of reasonableness it is at liberty to act with reference to the established usages, customs, and traditions of the people, and with a view to the promotion of their comfort, and the preservation of the public peace and good order. Gauged by this standard, we cannot say that a law which authorizes or even requires the separation of the two races in public conveyances is unreasonable or more obnoxious to the 14th Amendment than the acts of Congress requiring separate schools for colored children in the District of Columbia, the constitutionality of which does not seem to have been questioned, or the corresponding acts of state legislatures.

We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it. The argument necessarily assumes that if, as has been more than once the case, and is not unlikely to be so again, the colored race should become the dominant power in the state legislature, and should enact a law in precisely similar terms, it would thereby relegate the white race to an inferior position. We imagine that the white race, at least, would not acquiesce in this assumption. The argument also assumes that social prejudice may be overcome by legislation, and that equal rights cannot be secured to the Negro except by an enforced commingling of the two races. We cannot accept this proposition. If the two races are to meet on terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other's merits and a voluntary consent of individuals. . . . Legislation is powerless to eradicate racial instincts or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation. If the civil and political right of both races be equal, one cannot be inferior (552) to the other civilly or politically. If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane.

Justice HARLAN, dissenting. . . . In respect of civil rights, common to all citizens, the Constitution of the United States does not, I think, permit any public authority to know the race of those entitled to be protected in the enjoyment of such rights. Every true man has pride of race, and under appropriate circumstances, when the rights of others, his equals before the law, are not to be affected, it is his privilege to express such pride and to take such action based upon it as to him seems proper. But I deny that any legislative body or judicial tribunal may have regard to the race of citizens when the civil rights of those citizens are involved. Indeed such legislation as that here in question is inconsistent, not only with that equality of rights which pertains to citizenship, national and state, but with the personal liberty enjoyed by every one within the United States. . . .

In my opinion, the judgment this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the Dred Scott Case. It was adjudged in that case that the descendants of Africans who were imported into this country and sold as slaves were not included nor intended to be included under the word "citizens" in the Constitution, and could not claim any of the rights and privileges which that instrument provided for and secured to citizens of the United States; that at the time of the adoption of the Constitution they were "considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the government might choose to grant them." The recent amendments of the Constitution, it was supposed, had eradicated these principles from our institutions. But it seems that we have yet, in some of the states, a dominant race, a superior class of citizens, which assumes to regulate the enjoyment of civil rights, common to all citizens, upon the basis of race. The

present decision, it may well be apprehended, will not only stimulate aggressions, more or less brutal and irritating, upon the admitted rights of colored citizens, but will encourage the belief that it is possible, by means of state enactments, to defeat the beneficent purposes which the people of the United States had in view when they adopted the recent amendments of the Constitution, by one of which the blacks of this country were made citizens of the United States and of the states in which they respectively reside and whose privileges and immunities, as citizens, the states are forbidden to abridge. Sixty millions of whites are in no danger from the presence here of eight millions of blacks. The destinies of the two races in this country are indissolubly linked together, and the interests of both require that the common government of all shall not permit the seeds of race hate to be planted under the sanction of law. What can more certainly arouse race hate, what more certainly create and perpetuate a feeling of distrust between these races, than state enactments which in fact proceed on the ground that colored citizens are so inferior and degraded that they cannot be allowed to sit in public coaches occupied by white citizens? That, as all will admit, is the real meaning of such legislation as was enacted in Louisiana. . . .

If evils will result from the commingling of the two races upon public highways established for the benefit of all, they will be infinitely less than those that will surely come from state legislation regulating the enjoyment of civil rights upon the basis of race. We boast of the freedom enjoyed by our people above all other peoples. But it is difficult to reconcile that boast with a state of the law which, practically, puts the brand of servitude and degradation upon a large class of our fellow citizens, our equals before the law. The thin disguise of "equal" accommodations for passengers in railroad coaches will not mislead anyone, or atone for the wrong this day done. . . .

I am of opinion that the statute of Louisiana is inconsistent with the personal liberty of citizens, white and black, in that state, and hostile to both the spirit and letter of the Constitution of the United States. If laws of like character should be enacted in the several states of the Union, the effect would be in the highest degree mischievous. Slavery as an institution tolerated by law would, it is true, have disappeared from our country, but there would remain a power in the states, by sinister legislation, to interfere with the full enjoyment of the blessings of freedom; to regulate civil rights, common to all citizens, upon the basis of race; and to place in a condition of legal inferiority a large body of American citizens, now constituting a part of the political community, called the people of the United States, for whom and by whom, through representatives, our government is administered. Such a system is inconsistent with the guarantee given by the Constitution to each state of a republican form of government, and may be stricken down by Congressional action, or by the courts in the discharge of their solemn duty to maintain the supreme law of the land, anything in the Constitution or laws of any state to the contrary notwithstanding.

For the reasons stated, I am constrained to withhold my assent from the opinion and judgment of the majority.

344. HOLDEN v. HARDY
169 U. S. 366
1898

Error to the Supreme Court of the State of Utah. Compare this decision to *Lochner* v. *New York*, Doc. No. 364.

BROWN, J. This case involves the constitutionality of an act of the legislature of Utah of March 30, 1896, chap. 72, entitled "An Act Regulating the Hours of Employment in Underground Mines and in Smelters and Ore Reduction Works." . . .

The validity of the statute in question is, . . . challenged upon the ground of an alleged violation of the 14th amendment to the Constitution of the United States, in that it abridges the privileges or immunities of citizens of the United States; deprives both

the employer and the laborer of his property without due process of law, and denies to them the equal protection of the laws. . . .

In passing upon the validity of state legislation under that Amendment, this court has not failed to recognize the fact that the law is to a certain extent a progressive science; that in some of the states methods of procedure which, at the time the Constitution was adopted, were deemed essential to the protection and safety of the people, or to the liberty of the citizen, have been found to be no longer necessary; that restrictions which had formerly been laid upon the conduct of individuals, or of classes of individuals, had proved detrimental to their interests; while, upon the other hand, certain other classes of persons, particularly those engaged in dangerous or unhealthful employments, have been found to be in need of additional protection. . . .

This right of contract, however, is itself subject to certain limitations which the state may lawfully impose in the exercise of its police powers. While this power is inherent in all governments, it has doubtless been greatly expanded in its application during the past century, owing to an enormous increase in the number of occupations which are dangerous, or so far detrimental to the health of employees as to demand special precaution for their well-being and protection, or the safety of adjacent property. While this court has held that the police power cannot be put forward as an excuse for oppressive and unjust legislation, it may be lawfully resorted to for the purpose of preserving the public health, safety, or morals, or the abatement of public nuisances, and a large discretion "is necessarily vested in the legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests." . . .

But if it be within the power of a legislature to adopt such means for the protection of the lives of its citizens, it is difficult to see why precautions may not also be adopted for the protection of their health and morals. It is as much for the interest of the state that the public health should be preserved as that life should be made secure.

Upon the principles above stated, we think the act in question may be sustained as a valid exercise of the police power of the state. The enactment does not profess to limit the hours of all workmen, but merely those who are employed in underground mines, or in the smelting, reduction, or refining of ores or metals. These employments when too long pursued the legislature has judged to be detrimental to the health of the employees, and, so long as there are reasonable grounds for believing that this is so, its decision upon this subject cannot be reviewed by the Federal courts.

While the general experience of mankind may justify us in believing that men may engage in ordinary employments more than eight hours per day without injury to their health, it does not follow that labor for the same length of time is innocuous when carried on beneath the surface of the earth, when the operative is deprived of fresh air and sunlight, and is frequently subjected to foul atmosphere and a very high temperature, or to influence of noxious gases, generated by the processes of refining or smelting. . . . That both parties are of full age and competent to contract does not necessarily deprive the state of the power to interfere where the parties do not stand upon an equality, or where the public health demands that one party to the contract shall be protected against himself. "The state still retains an interest in his welfare, however reckless he may be. The whole is no greater than the sum of all the parts, and when the individual health, safety, and welfare are sacrificed or neglected, the state must suffer."

We have no disposition to criticise the many authorities which hold that state statutes restricting the hours of labor are unconstitutional. Indeed, we are not called upon to express an opinion upon this subject. It is sufficient to say of them that they have no application to cases where the legislature had adjudged that a limitation is necessary for the preservation of the health of employees, and there are reasonable grounds for believing that such determination is supported by the facts. The question in each case is whether the legislature has adopted the statute in exercise of a reasonable discretion, or whether its action be a mere excuse for an unjust discrimination, or the oppression, or spoliation of a particular class. . . .

From Volume II

610. BROWN v. BOARD OF EDUCATION OF TOPEKA
347 U.S. 483
1954

This case tested the validity of state laws providing for racial segregation in the public schools. The Court reversed the doctrine of *Plessy* v. *Ferguson,* 163 U.S. 537, that the Fourteenth Amendment does not outlaw segregation so long as equal facilities are provided for each race. The Court here ruled that "Separate educational facilities are inherently unequal." The Court followed this ruling with another on May 31, 1955, which established the principle that desegregation must proceed with "all deliberate speed" and assigned to the lower courts the responsibility for applying this principle: 349 U.S. 294. These rulings inaugurated a substantial revolution in the legal status of Negroes not only in the field of education but in other areas as well. On November 7, 1955, the Interstate Commerce Commission followed the Court's reasoning in a ruling that segregation was illegal on interstate trains and buses, *NAACP* v. *St. Louis-San Francisco Railway Company.* Following these decisions, the struggle over segregation shifted from the realm of law to the realm of politics. See B. H. Nelson, *The Fourteenth Amendment and the Negro Since 1920;* H. S. Ashmore, *The Negro and the Schools;* P. A. Freund, "Understanding the School Decision," *Congressional Record,* March 28, 1956; J. D. Hyman, "Segregation and the Fourteenth Amendment," 4 *Vanderbilt Law Rev.* 555; T. Marshall et. al., *Brief for Appellants in the case of Brown v. Board of Education,* filed in the U.S. Supreme Court, November 16, 1953; T. Marshall, "Supreme Court as Protector of Civil Rights," *Annals of the Am. Aca. of Pol. and Soc. Sci.,* May 1951.

Appeal from the U.S. Dist. Court, District of Kansas.

WARREN, C. J. These cases come to us from the States of Kansas, South Carolina, Virginia, and Delaware. They are premised on different facts and different local conditions, but a common legal question justifies their consideration together in this consolidated opinion.

In each of the cases, minors of the Negro race, through their legal representatives, seek the aid of the courts in obtaining admission to the public schools of their community on a nonsegregated basis. In each instance, they have been denied admission to schools attended by white children under laws requiring or permitting segregation according to race. This segregation was alleged to deprive the plaintiffs of the equal protection of the laws under the Fourteenth Amendment. In each of the cases other than the Delaware case, a three-judge federal district court denied relief to the plaintiffs on the so-called "separate but equal" doctrine announced by this Court in Plessy v. Ferguson, 163 U.S. 537. Under that doctrine, equality of treatment is accorded when the races are provided substantially equal facilities, even though these facilities be separate. In the Delaware case, the Supreme Court of Delaware adhered to that doctrine, but ordered that the plaintiffs be admitted to the white schools because of their superiority to the Negro schools.

The plaintiffs contend that segregated public schools are not "equal" and cannot be made "equal," and that hence they are deprived of the equal protection of the laws. Because of the obvious importance of the question presented, the Court took jurisdiction. Argument was heard in the 1952 Term, and reargument was heard this Term on certain questions propounded by the Court.

Reargument was largely devoted to the circumstances surrounding the adoption of the Fourteenth Amendment in 1868. It covered exhaustively consideration of the Amendment in Congress, ratification by the states, then existing practices in racial segregation, and the views of proponents and opponents of the Amendment. This discussion and our own investigation convince us that, although these sources cast some light, it is not enough to resolve the problem with which we are faced. At best, they are inconclusive. The most avid proponents of the post-War Amendments undoubtedly intended them to remove all legal distinctions among "all persons born or naturalized in the United States." Their opponents, just as certainly, were antagonistic to both the letter and the spirit of the Amendments and wished them to have the most limited effect. What others in Congress and the state legislatures had in mind cannot be determined with any degree of certainty.

An additional reason for the inconclusive nature of the Amendment's history, with respect to segregated schools, is the status of public education at that time. In the South, the movement toward free common schools, supported by general taxation, had not yet taken hold. Education of white children was largely in the hands of private groups. Education of Negroes was almost nonexistent, and practically all of the race were illiterate. In fact, any education of Negroes was forbidden by law in some states. Today, in contrast, many Negroes have achieved outstanding success in the arts and sciences as well as in the business and professional world. It is true that public education had already advanced further in the North, but the effect of the Amendment on Northern States was generally ignored in the congressional debates. Even in the North, the conditions of public education did not approximate those existing today. The curriculum was usually rudimentary; ungraded schools were common in rural areas; the school term was but three months a year in many states; and compulsory school attendance was virtually unknown. As a consequence, it is not surprising that there should be so little in the history of the Fourteenth Amendment relating to its intended effect on public education.

In the first cases in this Court construing the Fourteenth Amendment, decided shortly after its adoption, the Court interpreted it as proscribing all state-imposed discriminations against the Negro race. The doctrine of "separate but equal" did not make its appearance in this Court until 1896 in the case of Plessy v. Ferguson, supra, involving not education but transportation. American courts have since labored with the doctrine for over half a century. In this Court, there have been six cases involving the "separate but equal" doctrine in the field of public education. In Cumming v. Board of Education of Richmond County, 175 U.S. 528, and Gong Lum v. Rice, 275 U.S. 78, the validity of the doctrine itself was not challenged. In more recent cases, all on the graduate school level, inequality was found in that specific benefits enjoyed by white students were denied to Negro students of the same educational qualifications. State of Missouri ex rel. Gaines v. Canada, 305 U.S. 337; Sipuel v. Board of Regents of University of Oklahoma, 332 U.S. 631; Sweatt v. Painter, 339 U.S. 629; McLaurin v. Oklahoma State Regents, 339 U.S. 637. In none of these cases was it necessary to reexamine the doctrine to grant relief to the Negro plaintiff. And in Sweatt v. Painter, supra, the Court expressly reserved decision on the question whether Plessy v. Ferguson should be held inapplicable to public education.

In the instant cases, that question is directly presented. Here, unlike Sweatt v. Painter, there are findings below that the Negro and white schools involved have been equalized, or are being equalized, with respect to buildings, curricula, qualifications and salaries of teachers, and other "tangible" factors. Our decision, therefore, cannot turn on merely a comparison of these tangible factors in the Negro and white schools involved in each of the cases. We must look instead to the effect of segregation itself on public education.

In approaching this problem, we cannot turn the clock back to 1868 when the Amendment was adopted, or even to 1896 when Plessy v. Ferguson was written. We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to

adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.

In Sweatt v. Painter, supra [339 U.S. 629, 70 S.Ct. 850], in finding that a segregated law school for Negroes could not provide them equal educational opportunities, this Court relied in large part on "those qualities which are incapable of objective measurement but which make for greatness in a law school." In McLaurin v. Oklahoma State Regents, supra [339 U.S. 637, 70 S.Ct. 853], the Court, in requiring that a Negro admitted to a white graduate school be treated like all other students, again resorted to intangible considerations: ". . . his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession." Such considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. The effect of this separation on their educational opportunities was well stated by a finding in the Kansas case by a court which nevertheless felt compelled to rule against the Negro plantiffs:

> "Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to retard the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racially integrated school system."

Whatever may have been the extent of psychological knowledge at the time of Plessy v. Ferguson, this finding is amply supported by modern authority. Any language in Plessy v. Ferguson contrary to this finding is rejected.

We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. This deposition makes unnecessary any discussion whether such segregation also violates the Due Process Clause of the Fourteenth Amendment.

Because these are class actions, because of the wide applicability of this decision, and because of the great variety of local conditions, the formulation of decrees in these cases presents problems of considerable complexity. On reargument, the consideration of appropriate relief was necessarily subordinated to the primary question—the constitutionality of segregation in public education. We have now announced that such segregation is a denial of the equal protection of the laws. In order that we may have the full assistance of the parties in formulating decrees, the cases will be restored to the docket, and the parties are requested to present further argument. . . . The Attorney General of the United States is again invited to participate. The Attorneys General of the states requiring or permitting segregation in public education will also be permitted to appear as *amici curiae* upon request to do so by September 15, 1954, and submission of briefs by October 1, 1954.

It is so ordered.

611. CONGRESSIONAL RESOLUTION ON THE DEFENSE OF FORMOSA

January 29, 1955

(Public Law, 84th Congress)

Communist China threatened in 1955 to attack and overcome the last strongholds of the Chinese nationalist government on Formosa and the neighboring Pescadores islands. At the urging of President Eisenhower, Congress passed a resolution declaring that Formosa and the neighboring islands were essential to American military security and authorizing the President to use American troops to defend the islands from Communist attack. This is a rare instance of Congressional action giving the President authority to involve the nation in war at his own discretion. See Doc. No. 650; A. Dean, "United States Foreign Policy and Formosa," 33 *Foreign Affairs* 360; J. W. Ballantine, *Formosa, A Problem for United States Foreign Policy;* R. A. Smith, *The Rebirth of Formosa;* H. Feis, *The China Tangle.*

Whereas the primary purpose of the United States, in its relations with all other nations, is to develop and sustain a just and enduring peace for all; and

Whereas certain territories in the West Pacific under the jurisdiction of the Republic of China are now under armed attack, and threats and declarations have been and are being made by the Chinese Communists that such armed attack is in aid of and in preparation for armed attack on Formosa and the Pescadores;

Whereas such armed attack if continued would gravely endanger the peace and security of the West Pacific Area and particularly of Formosa and the Pescadores; and

Whereas the secure possession by friendly governments of the Western Pacific Island chain, of which Formosa is a part, is essential to the vital interests of the United States and all friendly nations in or bordering upon the Pacific Ocean; and

Whereas the President of the United States on January 6, 1955, submitted to the Senate for its advice and consent to ratification a Mutual Defense Treaty between the United States of America and the Republic of China, which recognizes that an armed attack in the West Pacific area directed against territories, therein described, in the the region of Formosa and the Pescadores, would be dangerous to the peace and safety of the parties to the treaty: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be and he hereby is authorized to employ the Armed Forces of the United States as he deems necessary for the specific purpose of securing and protecting Formosa and the Pescadores against armed attack, this authority to include the security and protection of such related positions and territories of that area now in friendly hands and the taking of such other measures as he judges to be required or appropriate in assuring the defense of Formosa and the Pescadores.

This resolution shall expire when the President shall determine that the peace and security of the area is reasonably assured by international conditions created by action of the United Nations or otherwise, and shall so report to the Congress.

612. EISENHOWER'S OPEN SKIES PROPOSAL

Statement on Disarmament Presented at the Geneva Conference

July 21, 1955

(*The Public Papers of the Presidents: Dwight D. Eisenhower,* 1955, no. 166)

All through the fifties the competition for nuclear weapons and the search for a formula for disarmament commanded the most anxious attention of statesmen. During the "thaw" in Soviet–United States relations brought on by the truce in Korea, the cease-fire in the Formosa