

## William P. Fessenden

### THE NEBRASKA AND KANSAS BILL <sup>1</sup>

March 3, 1854

(In the Senate)

It has been my desire Mr. President, if this debate continued long enough to afford me a fair opportunity of doing so, to submit a few remarks upon the subject under discussion, or upon so much of it as relates to the repeal of the Missouri Compromise. The hour is now, however, so late that I am exceedingly reluctant to enter into this debate at all; and I would refrain from doing so altogether, but for my own position, and what I believe to be the almost universal sentiment of the people of Maine. As the youngest senator in this body—the senator who has most recently taken a seat upon this floor—I have feared that it might look something like intrusion in me, at any time, and especially at so late an hour, to present any remarks whatever to the Senate upon a matter which has been so thoroughly discussed, and upon which nothing new in the way of argument can be adduced. If, however, any excuse were necessary, it may be found in the fact, stated in the public press, that the legislature of my own state, a Democratic legislature, has recently passed resolutions, almost unanimously, instructing its senators to endeavor, by every proper means in their power, to defeat the passage of this bill in its present shape. Under such circumstances, Mr. President, if I should suffer the occasion to pass without entering my protest otherwise than by a mere vote upon the subject I might be adjudged derelict to duty. I may add, sir, in reference to the hour, that controlled by the consideration that until every other senator who desired to speak had been allowed the opportunity to do so, and trusting that I might have the privilege at a proper hour

in the day to express such views as I might happen to entertain, I have remained silent to this time. But, sir, I understand, and it is generally understood, that the determination is to bring this matter to a final vote before we adjourn; and I have, therefore, only to avail myself of the present hour, as I best may.

#### "I AM OPPOSED TO SLAVERY IN ANY FORM"

Mr. President, I am opposed to slavery in any form and shape in which it exists, or may exist. I am free to say, that had I been a member of Congress when the question of the admission of Missouri was brought before it, and had then entertained the same opinions that I entertain now, I should have voted against its admission, as a slave state, to the last. I am free to say further, that had I been a member of Congress in 1850, I should have voted against what is called the fugitive slave law; and I should have voted against any organization of the territories of New Mexico and Utah, unless with the Wilmot Proviso as a part of the bills providing for such organization. But, sir, while I say this, I may express the regret that questions such as these have come to assume now a position of mere North or South. I do not intend, on this occasion, to argue the question of the social, or moral, or religious effects of slavery. Sir, I have none of what is called "sickly sentimentality" on this subject. I am not a "humanity-monger," in the language of the honorable senator from Georgia; that is to say, I am not a man who makes a trade of humanity; but when I say this, I hope I may be allowed also to say one thing more, and that is, that I respect even a "humanity-monger," a man who makes a trade of it, quite as much as one, if such a one can be found, who has no feeling at all upon

<sup>1</sup> U.S., Congress, Senate, *Congressional Globe*, 33d Cong., 1st sess., Appendix, pp. 319-23.

the question of slavery as it has existed, and continues to exist, in so large a portion of these United States.

While I do not intend, Mr. President, to make any extended remarks in relation to that part of my subject, for the very sufficient reason that the right to argue a question of that kind seems to be confined to southern gentlemen, and that when a man from the free states, according to my observation, rises here to speak on the subject of slavery in its relations to humanity, he becomes at once a "humanity-monger," or a sickly sentimentalist, or a fanatic, or something of that kind; while at the same time it seems to be perfectly right and proper that the other side of the question shall be debated at any length, at the desire or convenience of gentlemen—although I say I do not intend to enter into that question—I must be permitted to state to the honorable senator from Mississippi [Mr. BROWN],<sup>2</sup> that the people of my section of the country do not agree with him, and would not be much affected by the picture which he has presented of the peculiar social advantages of the institution. Sir, in the portion of country from which you and I come [Mr. FOOT<sup>3</sup> being in the chair], labor of any kind, if it is honest labor, is honorable. In that section of the country all men are equal, politically. Their social relations, and their social condition and position, they make for themselves. Every man must find them, or make them, as he can; but it militates nothing against his social position, although it may change the social sphere in which he moves—it is nothing that derogates from any political right, or any social right, or any other right that he has—that necessity compels him to labor; ay, sir, and to labor in a menial employment. In my country a menial employment, if it is an honest employment, pursued from necessity and not from taste, however menial it may be, is honorable to a man, if it be honestly pursued. We judge not the man by the kind of labor he follows, or by the amount of remuneration he receives for it. If he is an honest man, and labors honestly, he

is more respected even than one who performs a dishonest service, be the remuneration ever so high, ay, even although the reward for it might possibly be the highest office in the gift of the people of this country.

"SLAVERY IS OF NO ADVANTAGE"

This may be a vulgar notion, and it is a vulgarity common in that section of the country, we are willing to admit. But although our people entertain these vulgar notions they are not without others. They are a reading people, and a thinking people. They have churches, academies, common schools, newspapers, and all the ordinary resources of moral and mental education. As I have said, they read and they think, and, among other things upon which they entertain fixed opinions is this—that the institution of slavery is of no advantage, in any point of view, to any portion of the country in which it exists. They reason upon this subject, perhaps somewhat from contrasts. They contrast, for instance, the states of Ohio and Kentucky, of Virginia and New York. They go back to the time when Virginia was far ahead of New York in population and power, and they look at her present condition, and see that she is not inferior in physical and natural advantages; and perhaps they draw inferences unfavorable to the institution of slavery in its effects upon the growth and welfare of a people. They have also another idea, and that is, that inasmuch as they are a part of this people, inasmuch as they belong to this country, and are a part of the great whole, whatever is injurious to the whole becomes a matter of interest to them. And, sir, they believe, that if an institution injuriously affects the prosperity of a part its evils are felt throughout the whole system. It touches them as citizens, and as having an interest in the common welfare; and they have a right to consider and think of it; and not only that, but to express their opinions about it; and when they come here, desiring to uphold, within the scope of the Constitution, the rights of all the citizens of the country, of all men in this country, with due respect to every compact in the Constitution or otherwise—for they are a people who regard compacts—they have a right to think and speak as they please on this sub-

<sup>2</sup> Albert G. Brown (1813-1880) served in the Senate, 1854-1861.

<sup>3</sup> Solomon Foot of Vermont (1802-1866) served in the Senate, 1851-1866.

ject of slavery, as of every other, through their representatives, in this branch of Congress or the other. And this right they will exercise.

But, Mr. President, I go further, and say that, call it what you will—fanaticism, sentimentality, or any other name that may be most satisfactory to gentlemen—we claim the right not only to speak out our opinions in relation to the institution of slavery, whenever our interests, as a part of the great whole, are affected by it; but if there is any portion of this country where our interference is not precluded by the provisions of the Constitution, we have the further constitutional, and legal, and moral right to act upon it, and to act upon it here as well as elsewhere. And we may act, and should act, as well with reference to those great principles of justice and equality upon which our free institutions are based, as with regard to considerations touching our national or individual advancement and prosperity. Sir, I am one of those who believe them all to be so intimately blended that they are, and must remain, forever inseparable.

Leaving these general propositions, permit me to observe, Mr. President, that the people of the free states derive a more peculiar and immediate relation to this question of slavery from the Constitution itself. On looking at its provisions, they find that the slave power in this country—if I may so call it—has the benefit of the only inequality that I know of existing in that instrument. I allude to the principle upon which representatives are apportioned. Gentlemen all know—for every one is familiar with the provision to which I refer—that in this particular a very great advantage is given to the slave states. Its effect is to represent in the national councils that which in those states is recognized as property. If, then, this inequality exists, the free states are unquestionably interested to limit the increase and extension of such a power, so far as they can constitutionally do so, whether in old territory or new. Sir, we feel the effects of this inequality every day. We feel it in the greater degree of power exercised by the citizens of one state than is exercised by the same number of citizens of another. We feel it in that unity of purpose and concentration of action which are so much more readily accomplished

among a smaller than a larger number of persons, and which we never fail to experience when the interests of slave labor and free labor are supposed to be in conflict. Sir, that unity and concentration which the predominant nature and character of this institution afford, in all questions of national legislation affecting it, or affected by it, are quite enough of themselves, without superadding the weight of an unequal representation. In the free states we have no such principle of union. Our interests, whether fancied or real, are as various as our pursuits. And thus it has ever happened that the political power of this country has been wielded, and the legislation of this country molded, by that interest which, when the occasion calls for it, can always be brought to bear with its whole force upon a given point.

SLAVERY AND THE ADMISSION OF NEW STATES AND TERRITORIES

Sir, I am aware that at the formation of the Constitution slavery existed in most, if not all, of the states of this Union, and hence the provision I refer to might seem to carry with it the appearance of equality. But, as a matter of history, it is known that this rule of representation was much contested; and a single glance at the condition of the country at that time will readily explain why it was so. Senators are, undoubtedly, much more familiar with this matter than I am, for they have considered it and weighed it much more than I have. Sir, on looking back to that early time we see that the boundaries of the United States were fixed and determined. In some of the states slavery had died out, and in others, from whatever cause, it was fast passing away. The limits of slave territory and free territory in the old thirteen were then as well understood and defined in men's minds as they are at the present day on the face of the earth. Under these circumstances, known as these facts were, and with the limits of this country so specifically described and understood, it was wise for the framers of the Constitution and for the people to understand, and it is to be presumed they did understand, just how far this inequality in the Constitution of the United States would operate upon that portion of the country which was destined to be

free country. I say it was as well understood then as it is now; and that it was so, has become, as we may well suppose, a matter of history. The objections that were made to that provision in the Constitution at the time it was formed, were done away or overruled, and the North, or, as I suppose then there was no North, the free states, or those destined to be free, considered themselves, and at the time must have been considered, to have reasoned as they did reason, that the effect of that institution upon the political power of the country must necessarily be limited by the extent of that which remained and would remain slave country. The Ordinance of 1787 had been passed, and was in operation, and was recognized, and that tended to render still more and still better defined how far this provision in the Constitution would operate against what was to be the free portion of this country, and how far this inequality in the Constitution was to affect the rights and interests of the North.

But, sir, in process of time what did we see? The North has been accused here of endeavoring to oppress the South, and of wishing to limit the power of the South under the Constitution. Did the free states ever exhibit any disposition to limit that power so long as their action was confined to the original territory of this country? Was there any objection to the admission of Kentucky as a slave state, or to the admission of Tennessee as a slave state? Was there any agitation then upon the subject? Was there any fanaticism? Was there any objection to the admission of any one state formed out of that which was originally slave territory—Mississippi or Alabama? None at all, sir. They came in as readily, and met with as little objection from the free states of the Union, as any other act of the Congress of the United States. This is all matter of history, matter of common knowledge. Everybody knows it who is at all familiar with the history of this Union.

#### THE LOUISIANA PURCHASE

But the purchase of the Louisiana territory created a new state of things. Slavery existed there at the time of the purchase. That acquisi-

tion was generally admitted at the time, and is now generally admitted on both sides of this chamber, to have been at least of doubtful constitutional propriety. The honorable senator from Connecticut [Mr. TOUCEY]<sup>4</sup> was the first, I believe, in this debate, who has said that he considered it perfectly justifiable under the Constitution. It was not so considered at the time. It has very seldom been so considered since by the best authorities upon the Constitution of the country. It has been pretty generally admitted that it was, in point of fact, beyond the original intention of the framers of the Constitution, and has been justified only as a matter of necessity. But, waiving that, Louisiana became the property of the Union by virtue of purchase in the year 1803. I think that is the date; but exact dates are of little consequence. Soon after that—some years after—a proposition was made to admit Louisiana into the Union as a state. What was the effect of that admission? We had already four new slave states, I think, with eight senators on this floor, without objection on the part of the free states. Louisiana was proposed as a new state to come into the Union, changing the condition of things as it existed at the time the Constitution was formed, and giving to the South more and new power, not intended, not foreseen, and not anticipated by the North, or by the free states; for I am unwilling to repeat North and South so continually, as if there were no other points of the compass in this country. Louisiana came into the Union as a state. Was there any fanaticism upon the subject? Was there any difficulty made by the free states then? Did they throw themselves in the way of the prosperity of the slave states? Did they make any disturbance about the “peculiar institution?” The moment Louisiana was admitted, more power than ever was anticipated under the Constitution was acquired by the slave portion of this country; but was there any objection on the part of the free states? Not at all. If the subject was mentioned, it was passed over without creating any difficulty anywhere. And why? Because it seemed to be a matter of propriety or necessity. As my

<sup>4</sup> Isaac Toucey (1792–1869) served in the Senate, 1852–1857.

honorable friend, the senator from Massachusetts, has said, you could not have done otherwise, except by a mere act of abolition—by saying distinctly that Louisiana should not come in at all until it had taken measures to abolish slavery; a condition the free states did not propose; perhaps, did not desire. Was there any ground of complaint here on the part of the slave states of this Union? Had they any right to say, under the circumstances, that there had been any illiberality, any fanaticism, any desire to limit their power, or to confine them within narrow limits? Soon after that, some seven or eight years, Missouri was proposed for admission, and Arkansas became a territory. That was slave territory too. Slaves were there, I believe, at the time of cession.

#### THE MISSOURI COMPROMISE

But by this time—and it is not remarkable—the free states of the Union began to inquire what was to be the end and effect of all this. Here was territory which was not in the Union at the start. Here is territory extensive enough to make some six, or seven, or eight, or ten new states of this Union, which are to be admitted, one after another, and thus, probably, to change the whole existing state of things, as we understood them to be at the time the Constitution was formed. They then took a position for the first time; and I will show, by-and-by, why they took that position—that no more slave states should be received into the Union. Sir, was there not some reason for it? What consideration had they received? Was not this territory of Louisiana purchased, as we are told, by the common treasure of the United States? And, on the principle now assumed, that what is purchased by the common blood or the common treasure belongs to all, and must be fairly divided, was there not some reason why the North should inquire whether this thing was to go on, from one state to another, contrary to the original intention and understanding when the Constitution was formed, until we should be at last overborne by the territory thus purchased? Was there anything remarkable about it—anything that should occasion what I have understood to be the tremendous excite-

ment of that day, when the same cry which has since been heard in regard to the dissolution of the Union was loud all over this country, especially in the slave states, and we were threatened with disunion if the matter was persisted in? There was such an excitement, and it resulted, as these contests have eternally resulted since the foundation of this government, in the North giving way. Senators may talk here about this matter being settled; about the North having the balance of power in its hands, which it may retain, and will retain, in despite of every effort or wish to control it. But what is the fact? The fact, as shown by history, is, that there has been no conflict between the free states and the slave states since the foundation of the government, in relation to this important question, where the free states have not been obliged to yield in the end; and they have been obliged to yield because they were too much afflicted with that class of men described by the honorable senator from Massachusetts [Mr. SUMNER]<sup>5</sup> in his speech the other day, and for the want, moreover, of that unity of interest and purpose of which I have spoken heretofore. That contest continued for a time. What was the result of it? It is not pretended that at that period there was a single individual citizen out of Missouri, living and established north of the line finally agreed upon, with slaves, or otherwise. It was a wilderness, and there were certainly no slaves there. Therefore, there were no rights of slavery there. The result was an agreement, or compact, or whatever you choose to call it; for gentlemen now, in this branch of Congress, do not seem to deny that it was a compact. By that agreement a line was to be drawn on a certain parallel, and in all territory above that line, from that day thenceforth, slavery was to be prohibited, leaving the implication that slavery might be permitted below that line. Under that agreement and stipulation, not in the form of a contract, signed, sealed, and the consideration expressed, in order to suit the legal views of the senator from Connecticut [Mr. TOUCEY], not drawn upon according to the law books, but sufficient to be an under-

<sup>5</sup> Charles Sumner (1811–1874) served in the Senate, 1851–1874.

standing between honorable men, acting for a nation, acting upon a great national question, that line was established, and Missouri came into the Union. What was the result? What is the bargain? Gentlemen have spoken of a bargain. It was nothing more nor less than this: that above a certain line slavery should never go. That was the consideration. For that, Missouri should come into the Union as a state, unrestricted with reference to slavery. That is all. In the course of this debate it has been said that the free states broke the compact—that they objected to the admission of Arkansas. The fallacy of that statement has been proved in a public print. No man now will repeat it. There was no opposition founded on the fact that slavery existed there. Mr. Adams<sup>6</sup> was at the time the leading northern man in the House of Representatives, and he expressly said there was no such objection. No one made it an objection. So, then, with reference to the admission of Missouri itself, and with reference to the admission of the state of Arkansas afterwards, senators cannot make out any breach of compact, if compact it was, on the part of the free states. See what was done.

Look a little at what was given and what was received. On one side were three powerful states, destined to be powerful, each at the very moment of their admission entitled to two senators in this body, thus vastly increasing the political power of the slave states. I speak upon this question now, not as a sickly sentimentalist, but as a politician, in reference to its political aspects and effects—coming in at once or within a very short space of time. They gave to Congress all the power of those states, both by their senators and their representatives. What was given on the other side? A chance that, at some future day, a day which at that period was understood to be remote, far remote, above that compromise line might be formed free states. At that time the country was inhabited by Indian tribes. The title to a large portion of it was not acquired, and could only be acquired by treaty, which treaty would require the sanc-

tion of two thirds of this Senate, with all the power of the slave states in full exercise, to carry it into effect, before the lands could be occupied. And what has this government been doing since? The honorable senator from Tennessee [Mr. BELL]<sup>7</sup> has informed us; and we all understand that a large portion of that territory has been set aside as Indian territory; and that, in addition to the three or four tribes of Indians—I do not pretend to know the exact number—inhabiting that region of country at the time of its cession, some fifteen to twenty more have been removed and located upon it. This, sir, was the consideration received, and it is all the consideration. On the one side, three states were admitted within the course of a few years, with all the power they could bring into this body. On the other side was the remote possibility and contingency that, at some future day, when a large portion of the country, not yet settled, could be populated, free states should be carved out of it. Am I right, as a matter of fact? I believe myself to be historically correct.

#### LATER SLAVE STATES ADMITTED

What has happened since? Florida was admitted as a slave state into the Union without one word of objection on the part of the free states, thus making another slave state, coming in by purchase, above or beyond what was originally contemplated in the Constitution. A little further on, and Texas became annexed to this country; and the same line, by another compact or agreement, was to be run through that territory; but what was the effect of it? The immediate admission of a large, and rich, and powerful state, with two other senators, giving additional political strength to the slave power; we—I say we, because this is put as a question of North and South—the northern or free states of this confederacy having the possibility, at some future day, that we might acquire some additional free states out of the territory thus acquired. I should like very much, as the senator from Connecticut [Mr. TOUCEY]

<sup>6</sup> John Quincy Adams of Massachusetts (1767–1848) served in the Senate, 1803–1808, as president of the United States, 1825–1829, and in the House of Representatives, 1831–1848.

<sup>7</sup> John Bell (1797–1869) served in the Senate, 1847–1859.

and other senators have done, to speak for the whole country, and not for a part of it; but the difficulty is, that those gentlemen from the free states, from the northern states especially, who come here with these words in their mouths, to speak for all the country and not for a part of it, are apt to forget the part they come from; and, therefore, if I would not also forget the portion of the country which I represent, I must speak of that first, and before all.

Here, sir, have been three, four, five—I believe those are all—five powerful states admitted into this Union, with ten senators upon this floor, without objection, and all from newly acquired territory. Is there to be seen in this a disposition to oppress the South, to take advantage of numbers in reference to this question? Has any narrow, short-sighted policy been exhibited? I have not been able to find the slightest evidence of it.

#### THE COMPROMISE OF 1850

Well, sir, the compromise measures of 1850 became the law of the land. We had acquired new territory from Mexico, and new questions arose. And, sir, although the whole of that newly acquired territory was free territory in every sense of the word, yet notwithstanding, California could only come into this Union as a free state on the condition that two territories, Utah and New Mexico, should be so organized that they might hereafter become slave states. Such was the Compromise of 1850 in this particular. I wish senators to understand that I do not recognize that so-called compromise as in any manner binding upon me. Though a member of the Whig convention at Baltimore, which made those compromise measures a part of its platform, my honorable friend from Georgia [Mr. DAWSON]<sup>8</sup> will bear me witness—for we were both members of the committee which reported those resolutions—that I refused my assent to the resolution indorsing those measures. But they became the law of the land, and are recognized throughout the country as a compromise; and by those measures the

South obtained all it could reasonably anticipate or desire.

Mr. President, it has been claimed for these compromise measures of 1850 that they satisfied all parties, and restored peace to a distracted country. Secessionists, disunionists at the South, men who stand, I suppose, upon the same level with the fanatic and sickly sentimentalists, were hardly disposed to remain quiet; but the great mass of the people, North and South, seemed willing to avoid all further agitation, and wait the event. Why were they so disposed? Sir, the whole country had been threatened loudly with a dissolution of the Union. We heard much of concord and brotherly love. We of the free states, especially, were ominously informed that certain fire-eating gentlemen of the South were about to dissolve the Union within a week; and, if I rightly recollect, it was dissolved some two or three times in this very chamber. At any rate, the day was appointed; but, from some defect in the arrangements, it slipped by, and the thing was not done—the bolt did not fall. Sir, it is well understood that upon that threat, that pretense, the free states were induced to yield the Wilmot Proviso. I know it was argued that slavery could never go into those territories—Utah and New Mexico; that it was excluded by a law of Providence irrepealable in its nature, stronger than all human laws, which rendered the ordinance of 1787, as applied to those territories, not only useless, but absurd. If such was believed to be the fact, what was the occasion of so much angry excitement? Was the Union to be dissolved for a mere abstraction, an idea that, if carried out, could lead to no practical result?

Well, sir, the people of the free states have, pretty generally, chosen to submit. As a private citizen, I have been willing to content myself with the right to abhor the institution of slavery as much as I pleased; not wishing to interfere with it in any way within the limits of any state—either that of the senator from Georgia [Mr. DAWSON], or any other; having no desire to disturb his rights under the Constitution, or the rights of any other person, directly or indirectly; but feeling through my whole system a great aversion to the thing itself, and laboring,

<sup>8</sup> William C. Dawson (1798-1856) served in the Senate, 1849-1855.

moreover, as a citizen of this Union, residing in a free state, under the strong pressure arising from the constitutional inequality I have already spoken of. With these sentiments I have felt, and shall ever feel, bound in duty to resist, here or elsewhere, so far as I constitutionally may, the extension of slavery in this country to the utmost of my power—with little effect, it may be, but the obligation is no less imperative on that account.

But peace was obtained. We were a happy people. We sat down under our own vine and our own fig trees. We endeavored to be quiet. Brotherly love was all abroad. We met our friends from the South in perfect concord. All differences had been settled. There was no trouble anywhere. We were all, to use a familiar expression, "happy as the days are long." Suddenly, in the midst of this concord of ours, comes a proposition to take from the free states just that which had been given for all these civil, social, and political advantages which had accrued to the South—to take the little that was allowed to the free states by the compromise, or compact, or whatever you call it, of 1820. This proposition presents itself in this chamber without a word to the country, without a syllable having been said, to my knowledge, at least, in any state of the Union upon the subject. Southern gentlemen on this floor repudiate the authorship of the proposition, protesting that it did not come from them, and would not have come from them—admitting, in point of fact, as I understand them, that they considered the whole thing as dishonorable in itself, and the sin of it should not be laid at their door.

"WILL YOU SET THIS COUNTRY IN A FLAME UPON A PRINCIPLE?"

Why, then, is this remarkable proposition before us? For what purpose has it come? To allay agitation? There was none. To make peace? There was nothing but harmony, says the Compromise of 1850. Why was it? I am at a loss to divine. Was it to establish a principle merely? Will you set this country in a flame upon a principle? Gentlemen from the South tell us that nothing is to be gained by slavery from it. They tell us upon their honor that they think slavery cannot go into these territories.

Nothing practically good, or practically evil is to come from it. And yet we find every man of them, almost, on this floor, and on this question, contending that this thing shall be done, that it is right, and that although they had received all the advantages which I have mentioned from the previous legislation of this government, they yet demand more, and require that the compromise which set aside the whole of this territory for freedom shall, for political considerations, be abrogated and dissolved.

Sir, I have in my possession an address to the people of Maine, bearing date March 7, 1820, and signed by a majority of its representatives in Congress, among whom were Enoch Lincoln,<sup>9</sup> afterwards governor of the state, Ezekiel Whitman,<sup>10</sup> afterwards chief justice of its highest court. That address states the true ground of objection to the admission of the state into the Union. At that time she equaled in size and population any of one half the states of the Union. No one disputed her right to be admitted as a sovereign and independent state, as Alabama and Mississippi had been admitted without a question. Her territory was a part and portion of the old thirteen. She had furnished soldiers in the Revolution, and recruits to your army and navy in the second war of independence, as it was called. She had every claim to be received with open arms; and yet, sir, how was the fact? Her admission was opposed on political grounds. The opposition was founded in a jealousy of power. Maine was objected to without Missouri, because Maine, without Missouri, increased the power of the nonslaveholding states. For the first time, this question of the balance of power was raised, and raised by the South. And thus it happened that Maine, with her thousands of inhabitants, in full position, and having every capacity to become a powerful member of this Union, was to be, and was excluded, notwithstanding the previous admission of new slave states, almost without a question, unless, and until yet another slaveholding state could come in at the same time. Sir, with

<sup>9</sup> Enoch Lincoln (1788–1829) served in the House of Representatives, 1818–1826.

<sup>10</sup> Ezekiel Whitman (1776–1866) served in the House of Representatives, 1817–1821.



such a warning, was it wonderful, I ask again, that the free states should have begun to inquire where this was to end, and should have insisted upon a line beyond which slavery should not go? And when we find the South, almost to a man, advancing to obliterate that line, can we be at a loss to understand the object of such a movement?

The time and the manner, as it strikes me, of introducing this proposition into this body, are both singularly unfortunate. Why, sir, have gentlemen forgotten, on either side of the chamber, the appeal they made on this floor to the people of the North to quiet agitation? Have they forgotten all they said and prayed for? Have they forgotten the denunciations they threw out against those who causelessly or uselessly brought this country into a state of agitation? Have they forgotten the stirring appeals they made to the fraternal feeling of the free states. If they have not forgotten these things, let me ask them with what propriety can they now, when they say this is merely the affirmation of a principle; when they admit that no practical good is to come of it; when they say they expect nothing of it except to put a few words upon the statute-book—so soon as that agitation was quieted—how can they, with any regard to their own pretensions for love of country, yield their support to a proposition like this—a proposition most carefully calculated to excite all the angry feelings that can be excited in the bosoms of northern men. Sir, this was a compact. Will they not yield something for good faith? It is demonstrated here that the South received its consideration long ago. Will the free states feel nothing at being robbed of their portion? It is shown, palpably shown, that slavery has gained great advantages from this new territory; will you take away all the advantages you agreed some thirty years ago that freedom should receive from it?

Mr. DOUGLAS.<sup>11</sup> Who says it was a compact?

Mr. FESSENDEN. Who says it was a compact? Everybody has said so since I have been

on this floor. It has been said so over and over again.

Mr. DOUGLAS. What friend of the bill said so?

Mr. FESSENDEN. I cannot call names, but I have heard nothing else.

Mr. PRATT.<sup>12</sup> Give one name.

Mr. DOUGLAS. Yes, give one name. It has been called a compromise.

Mr. FESSENDEN. Well, I am not particular about words. If it was a compromise, what else was it but a compact, if that compromise resulted in an agreement?

Mr. BUTLER.<sup>13</sup> The gentleman seems to argue the question very fairly. Will he allow me to make a single remark?

Mr. FESSENDEN. Certainly.

Mr. BUTLER. I wish to pronounce what I think is consistent with the purpose of this bill. In the Constitution—now mark what I say, the gentlemen seems to trace distinctions very clearly—in the Constitution there were no such parties as North and South; there were thirteen states entering into this Union, and under the Constitution—

Mr. FESSENDEN. I deny that the thirteen states, as states, framed the Constitution. It was the act of the people.

Mr. BUTLER. Very well; go on. I have no hope for you.

Mr. FESSENDEN. The Constitution was not formed by the states as states. It was formed by the people of the United States, as I have always understood it. I am not choice, as I stated, in the use of language; and I do not care whether gentlemen admit the word "compact" to be applicable or not. I mean by that the proposition that they made themselves and enforced by the aid of other votes; those who voted for it from the North being pledged to go home and defend it before their people, on the ground that they had received this consideration for it. That is the doctrine, and no other, that I have heard, and is all I wish to say in reference to that point.

<sup>11</sup> Stephen A. Douglas of Illinois (1813-1861) served in the Senate, 1847-1861. (See Speeches No. 17 and 20.)

<sup>12</sup> Thomas G. Pratt of Maryland (1804-1869) served in the Senate, 1850-1857.

<sup>13</sup> Andrew P. Butler of South Carolina (1796-1857) served in the Senate, 1846-1857.

WE DO NOT ADMIT THE SENATOR'S AUTHORITY TO SPEAK FOR  
THE NORTH

I hope if there is agitation; if there is excitement; if there is fanaticism, if you choose to call it so; if there is sickly sentimentality, if you like that better, in the free states from this time forward, you will just cast your eyes back to those who made it, started it, and gave occasion for it. If you hear of cavilings at the North, coupled with denunciations of slavery at the South, recollect the state of quiet from which you brought it forth. It is not enough to tell the people of the free states that this was tendered by the North to the South. We do not admit the authority of the senator making it, though he may occupy a most eminent position, to speak for the North. He has no more authority than I have. At any rate, we repudiate him as acting for us in our part of the country. I can answer for my own state. With all the respect that the people of my state may have for his character and position, he cannot claim, and the gentlemen of the South cannot claim for him, or for any other gentlemen from the North who act with him, that he speaks for us, except so far as his own state is concerned. They cannot claim for him that he has any right to tender from the North this release. And allow me to say, that I do not understand that principle of honor, although it seems to be well understood here, which allows that what cannot honorably be taken directly, can be grasped with honor when offered by another having no authority to give it. There may be some very nice distinctions in the minds of gentlemen. They may be able to reconcile the difficulty. They could not, it seems, move in this matter; they could not undertake to bring it up in any shape or form; but, inasmuch as the proposition has come here, they will not wait to see whether it is authorized by those who alone are competent to make it, but will take it at once, and settle that question afterwards. Sir, I do not understand such a principle.

Sir, what are the particular grounds of excuse for the introduction of this troublesome question at the present time? Mark you, no practical result is expected from it. No change of position is to arise from it. Nothing is to come out

of it at all *except* the repeal of this restriction in the act for the admission of Missouri. That is all, and that all is nothing, say southern gentlemen. Why, then, is it to be done? Because, say several senators, that restriction is unconstitutional. But upon this point there is a difference of opinion among themselves. I understand my honorable friend from North Carolina [Mr. BADGER]<sup>14</sup> to say—and I have great respect for his opinion as a lawyer—that he has no doubt of the constitutionality of that restriction. I understand other southern gentlemen to affirm its unconstitutionality.

WHAT WILL BE THE EFFECT OF THE INCREASE OF SLAVE  
STATES?

But it is singular, that in the history of this question, the unconstitutionality of this restriction laid dormant in the minds of southern gentlemen for more than thirty years. It is very singular that it laid long enough for them to avail themselves of the admission of Missouri as a state, of Arkansas as a state, and of Texas as a state. When the latter question came up in this Senate, not the first man that I know of, or ever heard of, breathed the idea, or suggested it in any way, that a restriction thus fixed and determined was unconstitutional. Why did not that objection arise then? What new light has been shed upon the country? When did it come? Did it present itself at any time before slavery was ready—having secured all it at first claimed—to grasp all the remaining territory? How far is this to go? Are we next to remove the restriction in the resolution admitting Texas, and is all new territory hereafter to be acquired to be subject to no restriction? I think the country will be led to inquire what is to be the effect of this continued increase of slave states? Gentlemen talk of the balance of power having been secured to the free states. It strikes me that there will be some little power secured to the South, or to the slave states. But upon this question of constitutionality we have had an argument from the learned and honorable senator from Connecticut [Mr. TOUCEY]. He was not content with the views taken by other gentlemen, but has argued the matter in full, as

<sup>14</sup> George E. Badger (1795–1866) served in the Senate, 1846–1855.

a lawyer. Allow me to say, sir, that upon that question I never had the least doubt. I can give a reason for it. Sir, in my early reading there was such a thing found as sovereignty. The senator from Michigan has given us an argument on the subject of this constitutional power of Congress to prohibit slavery in the new territories.

Mr. CASS.<sup>15</sup> Do you find it in the Constitution?

Mr. FESSENDEN. Suppose I do not; does it exist, or does it not exist?

Mr. CASS. I will state to the senator that it gives you no power.

Mr. FESSENDEN. Is there such a thing as sovereignty recognized by the people?

Mr. CASS. I will state to the senator that it gives you no kind of power. You are sovereign in relation to other nations. When you want to know what you may do, you may consult the laws of nations to ascertain; but as to who is to do it, and how it is to be done, you must look to the Constitution; and if you do not find it there, it is with the people.

Mr. FESSENDEN. I acknowledge the very high authority of the honorable senator; but I want to ask again, and gentlemen may answer it or not, whether there is or is not such a thing as sovereignty, the power to command, and the power to make laws? It strikes me that there is. Well, if such a thing existed over this territory before it was ceded by France, if it did exist there when the territory was ceded to the United States of America, did or did not the sovereignty pass with the territory? It ceased in France. Did it become extinct, or did it live and pass to the United States? If it passed to the United States, it passed to the people of the United States. Sovereignty—what is not granted by the Constitution—is in the people. All sovereignty with us is in the people. They parted with none, except in the form of the Constitution. If it existed in the people, to whom do the people delegate that sovereignty? How do they exercise that sovereignty? Why, sir, they delegate it to the officers of the Constitution, whom the Constitution made; to the Congress

of the United States, and the president of the United States. What sovereignty they may have, so far as they did act upon the subject, was delegated to the Congress of the United States. Is not this particular subject provided for in the Constitution? Is nothing said about the territories in the Constitution? Do we not find them mentioned there? I believe we do. I think we find it said that Congress shall have the power to make all needful rules and regulations regarding the territories.

Mr. CASS. "Territory or other property."

Mr. FESSENDEN. I know that it is "territory or other property."

Mr. CASS. Not "Territories."

Mr. FESSENDEN. Well, the territory of the United States; because at that time there was but one territory. But "territory" is a general term. It means just as much as if it was in the plural, and said "territories."

Mr. WELLER.<sup>16</sup> Does not the senator regard the decision of the Supreme Court of the United States?

Mr. FESSENDEN. Undoubtedly; we are bound always by those decisions, though on one side I sometimes find they are of very little authority; but we will not dispute about that. I am not about to cite cases. I am speaking of what the Constitution provides; and it declares "the Congress shall have power to dispose of and make all needful rules and regulations respecting the territories or other property belonging to the United States."

Mr. WELLER. Territory.

Mr. FESSENDEN. Well, territory. It makes no difference—the territory of the United States. Gentlemen argue this thing as if that included nothing but the regulation of the lands. Is not that a new idea? How long has it existed?

Mr. CASS. Since the decision of the Supreme Court.

Mr. FESSENDEN. When was that?

Mr. CASS. Some twenty years ago.<sup>17</sup>

<sup>15</sup> Lewis Cass of Michigan (1782–1866) served in the Senate, 1845–1857.

<sup>16</sup> John B. Weller of California (1812–1875) served in the Senate, 1852–1857.

<sup>17</sup> In the case of *American Insurance Company v. Canter* (1828) the Court ruled that Congress had the power to govern the territories both under Article IV, section 3 of the Constitution and as part of the power to acquire territory through the treaty powers or war powers.

Mr. FESSENDEN. I cannot dispute the gentleman. Then that is to say that there is no further power given by that clause of the Constitution than to take and acquire land. Has the Supreme Court decided that?

Mr. CASS. I will state to the gentleman that the Supreme Court decided that "territory or other property," in that connection, meant lands. The Supreme Court decided afterwards, independently of that, that the power to regulate and dispose of the lands did include the right of jurisdiction.

Mr. FESSENDEN. What does the expression mean, "to make all needful rules and regulations?" Does it not mean to make laws? How otherwise do we make rules and regulations? Can Congress speak in any form except in the form of laws? What does the Constitution mean when it says that Congress shall "regulate" the value of commerce? How? By law. What does it mean when it says Congress shall "regulate" the value of the coin? How can it do that? By law, by statute. How does it make "rules and regulations" for the government of the army? By statute. How does it make regulations for the government of the navy? By statute. Congress can make no rule or regulation except as a law. Very well, then, if Congress has power; if so much of the sovereignty and power of the people of the United States is given to make laws for the territory, I should like to know where the limitation is on that power to make laws? The honorable senator from Michigan [Mr. CASS] himself says that there must be power to organize the government. Where does he get that from, and why do you go to necessity, when there is a positive provision found in the Constitution of the United States?

#### THE RESTRICTIONS ON SLAVERY WERE CONSTITUTIONAL

Sir, I do not deal in abstractions, but in plain and palpable provisions. "Congress shall have power to make all needful rules and regulations." Is there any gentleman here who contends that the power to organize and govern is not found under this clause of the Constitution, or if not found there, under the general power which it has as proprietary of the land? I thought it was contrary to southern doctrine

ever to resort to mere implication, when you find a positive provision in the Constitution on the subject. I say, then, that not only is this a new doctrine, but, in my judgment, it is a doctrine unfounded in the Constitution; and I say, moreover, to the senator from Michigan, that if you carry out his doctrine of squatter sovereignty, as it is called, I see no reason why the people of those territories may not institute a monarchical form of government, or any other which they choose, as long as they continue a territory; because, although the Constitution of the United States guarantees a republican form of government to every state, it does not guarantee it to the territory; and if they have the exclusive power of legislation, and taking care of themselves, and regulating their own concerns, I see no limitation upon them until they become a state.

I am no convert to the doctrine, new as it is, that this provision, this restriction upon the slavery power introduced into the act of 1820, was otherwise than constitutional. I believe that the similar restriction in the joint resolution for the annexation of Texas was equally constitutional. I believe that the Wilmot Proviso is quite as constitutional; and I have already said, that under my impressions, I would have adhered to it. I know of no other position taken except that assumed by southern gentlemen, who say that this restriction is at war with equal rights. We demand equal rights; we wish to go into that territory with our property, say they.

I do not mean to argue that matter. It has been exposed by the senator from Michigan fully and conclusively. But I would ask southern gentlemen why they cannot go there on as good terms as we can, if they go themselves? It would be a pertinent inquiry how many negroes a slaveholder must take with him from a slave state in order to place him on an equality with a northern man? Does your equality consist in having negroes about you? Why, there is no southern gentleman within the sound of my voice, or anywhere, who would not scout the idea that he was not, in every respect, equal, if not superior to, any northern man. And yet, gentlemen rise on this floor, and gravely argue that they cannot go into that territory on equal

terms, and with equal rights, with northern men, unless they can be protected there in that "property" which is so necessary to their social enjoyment. I do not intend to carry out this inquiry to any greater extent. I rose merely to state some of my own views, and the views which, as I believe, the people of my state almost unanimously entertain upon this question. They consider it a mere matter—I will not say of robbery, for that would not be parliamentary—but a matter of gross injustice. They make no appeals to the magnanimity of southern senators or representatives. They know that they gain nothing by such an appeal from those who come forward, under such a state of things, to repeal this compromise line, after availing themselves of all the advantages which have resulted from it. They would gain no more by appealing to their magnanimity than they would by appealing to their love of peace. But we may appeal, with some hope, to their justice; for I agree with my honorable friend from Ohio [Mr. WADE]<sup>18</sup> that, in the matter of justice, as administered in their courts, they have been ready to render just judgments.

THIS MEASURE WILL NOT BRING PEACE

But, sir, if this is designed as a measure of peace, let me tell you—not by way of prophecy, but as my own opinion—that anything but peace you will have. If gentlemen expect to quiet all these controversies by adopting what my constituents now consider, and very well consider, an act of gross wrong, under whatever pretense it may be, whether on the ground of the unconstitutionality of the former act, or any other, after having rested so long satisfied with it, let me tell them that this, in my judgment, is the beginning of their troubles. I can answer for one individual. I have avowed my own opposition to slavery, and I am as strong in it as my friend from Ohio [Mr. WADE]. I wish to say, again, that I do not mean that I have any of the particular feeling on the subject, which gentlemen have called "sickly sentimentality," but if this matter is to be pushed beyond what the

Constitution originally intended it; if, for political purposes, and with a political design and effect—because it is a political design and effect—we are to be driven to the wall by legislation here, let me tell gentlemen that this is not the last they will hear of the question. Territories are not states, and if this restriction is repealed with regard to that territory—it is not yet in the Union, and you may be prepared to understand that, with the assent of the free states, in my judgment, it never will come into the Union, except with exclusion of slavery. It may be that we shall be overborne as we have been before. I know not how many people of the North will yield to the cry of fraternity and concord, and all that sort of sweet lullaby which has been sung in their ears so long, I only know that if their rights are outraged in one particular they must look to the next point. I speak to gentlemen as they have spoken to northern men on this floor. If the compromise of 1820 is to be annulled, if the Texas compromise is to be considered unconstitutional and go for nothing, the time will come ere long when we shall be called upon to act upon another question than this of the mere organization of territories. I speak for myself with all frankness. Gentlemen have talked here of a dissolution of the Union. We have heard that threat until we are fatigued with the sound. We consider it now, let me say, as mere *brutum fulmen*, noise, and nothing else. It produces not the slightest impression upon the thinking portion of the public. You laugh at it yourselves.

Mr. BUTLER. Who laugh? [Laughter.]

Mr. FESSENDEN. You at the South. You do not carry it seriously into private conversation.

Mr. BUTLER. No, sir; if your doctrine is carried out, if such sentiments as yours prevail, I want a dissolution right away.

Mr. FESSENDEN. As has been said before, do not delay it on my account.

Mr. BUTLER. We do not on your account.

Mr. FESSENDEN. Do not delay it on account of anybody at the North. I want the gentleman to understand that we do not believe in it. We love the Union as well as you do, and you love it as much as we do; I am willing to allow all that. But, sir, if it has come to this, that whenever a question comes up between the free

<sup>18</sup> Benjamin F. Wade (1800-1878) served in the Senate, 1851-1869.

states and the slave states of this Union we are to be threatened with disunion, unless we yield, if that is the only alternative to be considered, it ceases to be a very grave question for honorable men and freemen to decide. I do not wish to say anything offensive to gentlemen, but I desire them to understand what I mean. It is that we are ready to meet every question on this floor fairly and honestly; we are willing to be bound by the decision of the majority, as law. If it operates hardly upon us, we will bear

it. If it is unconstitutional, we must go to the proper tribunal for a decision, and not threaten each other with what no one of us desires to execute.

Such, sir, are my views in reference to this matter. I have not spoken them so much for the Senate as for the purpose of giving expression to what I believe to be the sentiments of those I have the honor to represent on this floor. Whether right or not time only can decide, and I am willing to abide that decision.