IN SENATE OF THE UNITED STATES.

February 4, 1845.
Submitted, and ordered to be printed.

Mr. Archer, from the Committee on Foreign Relations, submitted the following

# REPORT:

*The Committee on Foreign Relations, to which have been referred sundry joint resolutions and a bill on the subject of the annexation of Texas, and also sundry instructions of State Legislatures, and memorials and petitions on the same subject, have had the same under consideration, and report:*

The question of the incorporation of Texas into the United States has awakened and is exercising in no ordinary degree the reflection and the sensibilities of the country. The interests it addresses are so powerful, and the prepossessions and feelings to which it appeals so vehement in their temper, as fully to explain the solicitude which hangs on the decision. This feeling is as diffused as intense—every head is filled with the interest of the discussion, and every tongue employed in it. Nor is the prognostic yet decisive of the issue, the scales of the controversy depending by a beam too tremulous to give assurance of their adjustment.

Excitement, unhappily, is not confined to individual sentiment. This temper has extended itself to some of the public bodies of the country, evincing in their proceedings the malignity of its influence. The accents unhallowed have been heard in more than one quarter, denouncing danger to the integrity of the Union in the event of the refusal to annex Texas in some parts—of the persistance in the policy of doing so, in others.

In a condition like this, of the temper in which the subject of the policy of annexation is regarded, the committee could have no hope of contributing to any advantageous result, were they to engage in the discussion. Opinion is too inflexible in its array on the different sides of the question for further discussion to promise successful inroad on either side. The committee, desirous in this state of the question to be at liberty to decline it, find authority for doing so in the circumstances of the reference to them. The propositions submitted, framed in each instance with a view to the annexation of Texas, the real intendment of the submission to them has not been so much to elicit an opinion on the vexed question of the policy of annexation as to report on the fitness of the several schemes proposed for carrying the policy into effect. In this view, which has been impressed forcibly on the committee, they have not felt that they would be practising any improper avoidance of a duty imposed upon them, in deciding to con-

fine their research to the character of the measures referred, as the proposed expedients of annexation, leaving aside, not as inappropriate to their office of inquiry, but as already passed on, however, though in different modes, by the country, the large and agitating topic of the expediency. This explanation they do not permit themselves to doubt will, if not received by the Senate with approval, attract no reproof of the course they have adopted.

Confined, then, to the questions of the qualification of the schemes of annexation proposed, they have supposed this inquiry of qualification to relate to the constitutional discussions which have been raised in connexion with the propositions of annexation, respectively. These last questions, as the assigned province of their inquiry, they proceed to consider.

The propositions of annexation have a pervading character, and involve, all of them, the assertion of two distinctive principles: 1st. That a power to annex foreign territory and population belongs to the Government. 2d. That this power is deposited with Congress, the legislative branch of the Government. These assertions resolve in subdivisions: 1st. Is there a power in the Government to introduce foreign territory into the Union? If there be, is Congress the department to exert it? Is there power to introduce to the bosom of the Union, in mass, a foreign population? If there be, which is the department, is it Congress, which has the authority to exert it? And if foreign territory and population may, under the Constitution, be admitted into the Union, can they be received in a character of combination—that is to say, in the form of a political State, sloughing off its primordial condition in this respect, and transferring itself to the Union as a member?

These, and resulting in this mode of resolution, form the topics for examination, to which the committee have to address themselves.

And of these, first, is there a power in the Government to make acquisition of foreign territory? This inquiry is not precluded, it must be observed, by the fact that the power has been exerted—acquiesced in—territory to a great extent acquired, and this distributed in modes of irrevocable disposition. The power may have been unduly exerted—assumed; or circumstances may have had existence, forming one of the allowed cases, in which restraint, even moral as well as political, is submitted to dispensation. Circumstances of this character, as does not admit of denial, are of possible though not of frequent occurrence. An imperious pervading law holds sway over all the institutions of man. Their peculiar requirements, however recommended in the ordinary condition of affairs, must bend to the principle of their creation—a paramount utility. Nor can the proposition admit of controversy, that the cases to which this privilege of exception may apply, may be short of the rigor of the recognised principle of the salus populi. Institutions and their forms, of the highest grade, constitutions of Governments, have no exemption from this law of dispensation, of an inflexible rigor in all the possible modifications of contingency. Institutions, in every gradation and diversity of form, are made for weal; and it is the consideration of the highest weal (the result of inviolability) which commends them in any instance to a rigorous observance. When this highest weal is heard to pronounce its imperious fiat, rules of ordinary observance surrender these immunities, and tender their obedience.

To the description of these cases of dispensation from rules, the circumstances which attended the acquisition of Louisiana (the first of our terri-

torial acquisitions) would without question have been assignable, had it needed such defence. The laws neither of nature nor reason, nor the ties, not less exacting than interest, of affinity, demanded of the West adherence to the Union, in the absence of control of the debouchement of the Mississippi. To this region this debouchement was the artery of life. From the obstruction of its circulation, the gigantic limb must perish, destined to be, as was foreseen, and as it has become, the strength of the Union and its pride. And obstruction had then recently occurred, the menace of it permanent, to the efflux of this vital circulation.

It was in these circumstances that Mr. Jefferson, then at the head of our affairs, "seized," to employ his own language, "a fugitive occurrence," to realize a great and signal and inappreciable benefit to his country, which would have been his title to renown, had the author of the declaration which announced the independence of his country, and who had aided to fix its foundations, wanted further title to reputation.

And yet this same author of this magnificent achievement was the person to fix the stigma of an illegitimate acquirement on the trophy which he had consecrated to his country. Not only did he not arrogate, he was loud, on the contrary, and emphatic, in the disclaimer of the authority he had wielded, if not in the preservation, for the great advancement of his country. His vindication—for, even in the complacency and pride of the memorable merit, it was he that held the tone of vindication, and invoked the application of indemnity—his vindication he put on the ground of a benefit too large to admit of sacrifice to the inhibition even of the Constitution. The language is so remarkable, and the position of Mr. Jefferson so peculiar to the question of power in discussion, that omission to quote it particularly would want excuse in the analysis of a question, a material part of which is its history. This quotation follows:

"This treaty," said he, referring to the then recent fact of the acquisition, "must of course be laid before both Houses, (Congress,) because both have important functions to exercise respecting it. They, I presume, will see their duty to their country in ratifying and paying for it, so as to secure a good which would otherwise probably never be again in their power. But I suppose they must then appeal to the nation for an additional article to the Constitution, approving and confirming an act which the nation had not previously authorized. The Constitution has made no provision for our holding foreign territory, still less for incorporating foreign nations into our Union. The Executive, in seizing the fugitive occurrence, which so much advances the good of their country, has done an act beyond the Constitution."

Subsequent reference is made to an act of *indemnity;* and, in another place, an amendment of the Constitution is suggested, to make provision for the case of Louisiana, and for that of the introduction of Florida, in the contemplation of this last acquisition.

Recurrence, then, to the earliest and fundamental precedent of the exercise of the power in question would yield no support to the claim of it. The exercise, on the contrary, founds its claim to vindication on the plea exclusively of a superior occurrence of public exigency, which overrode the restriction of the Constitution. Exercise of the power, therefore, seeking vindication under this precedent, would have to bring itself within the same predicament—invoke the authority of the same plea.

The committee, however, refer to this history of this first exercise of the

power, and the doubt which was attached to the regularity of that exercise, as an essential part, (as they have already said,) of the statement of the origin and progress of the discussion on the subject of the power, and not at all as designing any expression of concurrence in the doubt. They hold this doubt, on the contrary, to want foundation in a just construction of the Constitution. That as the exertion of the power in the instances of its exertion had been, in a high degree, fraught with public benefit, so the exertion was void of any stain of irregularity and assumption. The acts of exertion having taken their place in our history, the object is eminently desirable to relieve them from stigma; and to the committee the office, grateful, of being instruments, if they may become such, in the effectuation of the removal. Occasions for the further exercise may be presented in other times. In the honest judgments of many, an instance is presented at this moment for exertion of the power no less fruitful in trophies of service and honor, than those which have gone before it. The room for regret were undoubted, if occasions such as these, should they offer, must suffer repulse, or be availed of "with re-attachment of a stigma in their seizure."

The committee, or a majority, (and when the designation is employed, it is desired that it may be regarded as importing only a majority,) entertained the undoubting opinion, that not on what have received the denomination of latitudinous or liberal principles of construction of the Constitution only, but in conformity with the strictest, the power in question is clearly to be derived.

It will be necessary, obviously, in the maintenance of this assertion, to advert, in the degree which the purpose may require, to the principles of this strict construction referred to, in the way of measuring the assertion by their requirements, and ascertaining if it will bear their tests and modes of application of them.

The fundamental assumption, then, of the school of strict construction of the Constitution, conformed entirely to the fact, is, that the Constitution makes a grant of powers, limited so strictly as to be comprehended by a schedule of enumeration of the powers, with the appurtenance only of incidents essential. According to this construction, there are none other than named powers in the instrument; the principal powers with their proper names; the incidental or subsidiary with a common name of "necessary and proper;" that is to say, fair, not forced, accidents of the principal or enumerated powers. A name by definition is as much a name, though not as exact, as an expressed one. The definition of their required attributes gives name to the subsidiary or incidental powers in the Constitution. The principal powers are set down by their cognomen, or names proper. But definition is naming, as naming is nothing else than a more compendious form of definition.

Any power, then, to be valid under the Constitution, must be able to answer to its name—the name in the case of the subsidiary powers being a family name, the name of a class of powers. Whether the power in discussion over the introduction of territory will answer the test of this description, has a name given, or proper to which it may respond, will be seen in the sequel.

The foreign territory which the nation has acquired having come through the avenue of the treaty-making power of the Government, the opinion until very recently has prevailed universally, that this was the sole avenue through which it could be derived. When it has been inquired, where

does the treaty-making authority find power to acquire territory? it has been replied, by some of the politicians of the country, that the treaty-making power has been subjected to no limit by expression in the Constitution; that no limit is therefore predicable of its range, which is as wide as the exterior exigencies of the nation.

It was the just remark of Mr. Jefferson, that, if the power had this extent of range, then we had no Constitution; that there was, indeed, a paper, but a blank one. The committee yield entire assent to this opinion of Mr. Jefferson, and to his further doctrine, and that of his school, that, if the power has limits, they must be constituted by the objects of the powers named in the Constitution. If this be so, the doctrine is sound; then the treaty-making power can never have capacity of exertion, unless in the cases in which its aid is invoked by some one of the expressed powers, to carry out the purpose, which, being of exterior relation, the powers of domestic sphere of operation would be unable for that reason to reach, without the aid of this power of exterior operation. The treaty-making power, under this construction, can never be any other than subsidiary—is never a power independent in its *vocation*, however it is so in its name and its structure. It is the handmaid—waits on the occasions of the other powers; and though in no posture to receive orders from them, it never yet moves to its exertion, save in subordination to their desires.

This character of the treaty-making power it is very important, in reference to just construction of the Constitution, to establish; and the establishment of this, with another related proposition, extremely essential to the argument in relation to the power of acquiring territory, which the committee have under review. Let the proposition be considered as conceded, that the treaty-making power is never to exert its office but in subservience or execution of an object of another power. Then the related proposition follows, that there must be a purpose or object of another power to antecede exterior, and therefore which it cannot attain except by the auxiliary function of the treaty-making power.

This analysis and description of its appropriate office contains the treaty-making power surely in entirely safe limits. It cannot act except on behalf of another power, and in a case in which, the object being exterior, is out of the reach of that other domestic power.

But let it be remembered, on the other hand, that although this treaty only acts for other powers, and in the single sphere of exterior concerns, within this sphere no other power has privilege to intrude; the domain is all its own, in a property exclusive. If the affair to be accomplished be exterior, and require the intervention of compact to accomplish it, here with the treaty-making power is the office, and the sole office, to accomplish it. No other power has privilege to touch. The questions are presented, Is the affair exterior? Does it require the exercise of the function of compact for its arrangement? Then here is the province, not more undisputed than it is exclusive, to act. The power to which all exterior affairs, demanding arrangement by compact, which can only be effected through arrangement, compact, by bargain—these implying all of them terms, stipulations, conditions—the power to which these things are confided by the Constitution, how can it be intruded upon lawfully, invaded in its province, divested of its jurisdiction?

Is not this intrusion, invasion, overthrow, of an appointed, distinct, plain

jurisdiction, established by the Constitution, perpetrated when any matter which is admitted to be foreign, and admitted to be *inexecutable*, except by the instrumentality of arrangement, is seized by another power or department of the Government, and transferred to its own jurisdiction?

This reasoning, which it is manifestly impossible to subject to just impeachment, decides one, and that not the least important, of the questions under the review of the committee. The period of the discussion for its application to that topic has not yet been reached. At the appropriate season, the application will be invited.

In the necessity to the progress of the argument, of treating and expounding the just character of the treaty-making power, the order of the argument has been in some degree disturbed. Let it be restored, the path pursued of the inquiry into the derivation of the power to acquire foreign territory, of which the committee have professed themselves the advocates.

This power, it has been seen, if it be a true, not a spurious, derivation of strict construction of the Constitution, must answer to a name—an expressed name or a family name. Is its name in the Constitution? Not expressed. Indeed, expression is there which would wear the appearance of condemning this power to exclusion. Power is given to purchase and exercise exclusive control over portions of domestic territory, of dimensions extremely circumscribed, and that under a limitation to objects minutely specified. "Congress shall have power to exercise exclusive legislation," &c., "over all places purchased by consent of the Legislature of the State," &c., "*for the erection of forts, magazines, arsenals, dock yards, and other needful buildings.*" A power could not be conveyed under guard of limitation more strict, as regards the faculty of purchase for this exclusive control. The limit is to small surfaces, for purposes not large in their scope; and this under the superadded restraint of the requisition of a State consent. But the power which the Government is permitted to exert over territory acquired abroad, beyond the limits of the United States, is of the same extent precisely with this, which is given under guards so specific and strict in relation to the acquisition of domestic territory. In the case of each, the power is of the largest description—that is to say, discretionary. "Congress shall have power to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States." Put on the foot of property, subject, like that, to power of disposal—unlimited privilege to regulate, with no restraint. This is the condition, as respects jurisdiction, to which territory acquired abroad comes on its admission to the authority of the Union. What authority to be conceived of has scope more unconfined? How can the conception be framed, in connexion with restraint, as respects the purchase of surfaces the most minute of domestic territory, of the grant of a faculty undefined, and at the same time unlimited entirely as regards the acquisition of foreign territory? How are the stint in the one case, the profusion in the other, to be put into condition of reconcilement? How find permission to make inference of any concession of a power to acquire territory abroad? If designed, must it not in these circumstances have been expressed. set down in the Constitution by the side of the limited power to make acquisition by purchase of domestic territory, or put into the elaborate schedule of the enumerated powers in the instrument? The inference adverse to the admission of the power from this source of construction would be irresistible, but for a countervailing principle of yet higher import; and that is, that inference from the

omission to express positively must give way to any that may flow by fair deduction from that which has been expressed. This power to get foreign territorial possessions has not, indeed, been set out by expression in the Constitution, as might have been expected, supposing it contemplated. Yet, still, if it be found really, by fair inquisition, wrapped in a power or powers which have been set down, just construction finds no warrant for setting it aside, and putting it under the ban of a spurious conception.

Is, then, this power to make acquisition of territory abroad within the pale of the Constitution? Does it answer to the name which it has been seen is prescribed in relation to power seeking admission to this pale? Can it give the countersign of the Constitution, to gain admission as a regular enlisted soldier in the service to the camp? That is the proposition to be inquired of, the matter to be ascertained.

The power must be by a plain, not a forced, construction—the derivative of one of the named powers in the Constitution. Of which of these is it attributable as a clear incident? Is there any one? Answer, more than one. Territory may be a subject of transfer in several modes. Conquest transfers—it is one of the recognised modes; so does purchase. Or the supposition may be made of a voluntary concession by the political authority holding command of a territory, with a view to incorporation with another, such as we have lately seen under discussion. In either of these modes, can the United States become, with allowance from their Constitution, the receptacle of a grant of territory exterior to their limits? The United States and their Government, like all other Powers in recognised independence, have the faculty (in our Constitution expressed) to declare and conduct war; of course, to make conquest of territory, if occasion require; of course, to retain it in permanent occupation, if the same be found to demand this condition. Here, then, is the faculty, uncontested, to make the acquisition of foreign territory. To which of the departments of the Government this faculty is to be properly considered as inuring—with which it resides—will be the subject of consideration in another branch of the inquiry.

Next, acquisition by purchase. Is there a competency to this mode of acquisition? Mr. Jefferson, it has appeared, when he exerted this power of purchase in the case of Louisiana, held the opinion negative of the power. Is that to be regarded the just interpretation? The spectacle would be an anomaly, indeed, of a faculty admitted in a Government to possess itself of foreign territory by the instrument of war, and yet precluded from the uses and power of the exercise of this faculty in peace. The occasions for the acquisition of territory being *sincere and strong* in possible instances, as in that of Louisiana, where the acquisition would have been made with certainty by war, if the effectuation of the object had not taken place in peace, not to speak of the vehemence, independent of these occasions, of the passion which incites to war, what sort of a Government would that be, which, having real occasion for the possession of foreign territory—the mode of acquisition to be blameless, as purchase—was so constrained by its Constitution as to be obliged to renounce the ascertained advantages of the acquisition, or have to purchase them by declaration of war against the willing party to transfer the possession desired? The idea of this form of bounty to war, and comprehended, too, among the *restrictive* properties of the Government, (which is the character of the denial of the power to acquire a for-

eign possession in the mode of purchase under our Constitution,) it would be no indulgence of license to call ridiculous, but for the names of the persons who have avowed it. On record we have the lesson, that "too much learning" may make men seem to be unsober, however it may belong to their character and province to speak the words of soberness and truth.

Is, then, the Government of the Union endued with the power to gain a foreign desired and desirable possession, in the mode of purchase? Have the gains of territory, great in extent, of value inappreciable, which have been made in this mode of acquisition, been justly liable to the stigma of acquisition not authorized by the Constitution of the nation?

The committee, or a portion of them, deem this opprobrium gratuitous altogether; that the imputation of assumption of power not authorized ought not to attach to the history of the administration of Mr. Jefferson, though he has himself been the author of it.

The doubt on this subject is believed to have resulted from the circumstance of the clause in the Constitution relative to this exercise of the faculty of purchase—the clause which defines and sets out the objects of the application of money, known, for brevity, as the appropriating clause of the Constitution—became very early a topic of vehement and exacerbated contention between the rival parties which sprung from the first administration of the Government. The terms of the clause give to Congress "the power to lay and collect taxes, duties, imposts, &c., to pay the debts and provide for the common defence and GENERAL WELFARE of the United States." By one construction of this phrase, "the general welfare" was said to convey a scope of application of money coextensive with the convenient occasions which discretion might assign to the public expenditure. This construction was arraigned, and justly, of latitude at once unfounded, and full of a dangerous discretion in the office most exposed in Government to abuse the disbursement of its revenues.

As is the law of the human moral constitution, the party, filled with just impression of the character of this dangerous interpretation of the phrase in question, was impelled to a reverse extreme, in the denial to the phrase of all operation—maintaining that it was to the powers enumerated in the Constitution, and the execution of their proper purposes, that the application of money could alone be made, and by this measure to be confined. The objection to this construction was not permitted to avail, that it left no scope of operation whatever to the phrase "general welfare," in the clause, treating it as surplusage.

To a construction of that instrument which assigns to any clause, phrase, or word, in it, this character, no man who has penetrated successfully the anatomy of its composition can be ever brought to accede. Marked, as it is by consenting eulogy, for the refinement of its structure, no less than the magnitude of the tribute of benefit it accords, let no presumption, standing in the view of this refinement and its results, pronounce charge of impeachment against the structure; allege deficiency of provision, or excess; stone or beam wanting, or superabundant; expression conveying too much, or importing nothing; of signification malign, or void of operation. Nor is there clause or phrase in the instrument illustrative more forcibly of this just praise than this misconstrued example, part of the definition of the application of money in the appropriating clause of the Constitution. It has been construed to have import of dangerous latitude; to be void of a distinctive import. In opposition to the last of these interpretations, the

want of import, it will be found to have one full of significance. In opposition to the second, the imputation of latitudinous import, it will be found to have one purely restrictive of the expenditure of revenue—the reverse exactly of the characteristic in this respect assigned to it.

It was impossible, manifestly, to give distinct expression to all the various occasions of expense, in adjusting the framework of a Government, the mechanism of the Constitution. This proposition is too plain to be illustrated. In adjusting the provision for expenditure, fashioning the clause which was to give the law to appropriation and the application of money, what, then, would be the obvious key to the mechanism? To employ phraseology of a comprehensiveness, in which all essential occasions of expenditure should be included. In effecting this essential object, however, there would be danger of running into latitude inconsistent with the required guards on wasteful disbursement. In what manner, or in any manner, could the difficulty be obviated? The manner in which this reconciling purpose is effected is one of the most signal and admirable, for its combined efficiency and safety, of the arrangements of the Constitution.

Expenditures, wearing a national quality only, are those which a Federal Government would have for its object to provide. Expense of every other character it would be, as much as possible, the object to exclude, as not appropriate to the purpose and scope of the institution of Government. It is not the purposes and interests common to the parties in a Federal Union, which this Union, and the Government which represents it, are constructed to subserve. This supposition would involve a gross misapprehension of the design of such a Union. So far from this forming the design, the jealous propensity and purpose is to comprehend the smallest number of them possible.

Which, then, is the class of interests and concerns which it is within the purpose of a Federal Government to submit? Those which appertain not to the States severally, though common to all, but to their conjunct character as a political union or corporation. That is to say, the concerns which are GENERAL belong to this corporation, in place of those which appertain in common or otherwise, to the component States in a disjunctive capacity. Provision for expenditure, which was to have respect to this distinction, could have no other single word to give expression to it, but this word "general." Not several, not common, was the welfare for which provision was to be made, but corporate—that which attached to the political union, fashioned not by aggregation of concerns and interests, but extraction from them, leaving the residuum out of the pale of the federal authority, and confining the sphere of jurisdiction of this authority to the compound welfare constituted by the extraction; that is to say, the GENERAL welfare. The import of words is shown by their contrasts and opposites. This word "general," in the Constitution, stands opposed not merely to what is particular, or several, or common, merely, but to what is INCORPORATE or disjunct. Welfare, to be *general*, must not only be of the whole, but which attaches to it in this character as a whole.

In this, the just import of the expression, and its intendment in the appropriating clause of the Constitution, the phrase "general welfare" implies an interpretation more restricted than if it had been "common welfare;" and the application of money authorized is more confined, therefore, in the use of the one, than it would have been in the employment of the other of

these phrases. The statement of the general welfare, as the permitted object of expenditure, was designed undoubtedly in restraint, not for enlargement, but to preclude enlargement in the scope of expenditure, by its expansion upon purposes and objects which might be common, but not general to the Union. One subject of expense common only is permitted, (on account of the vitality of its interest,) defence. Expense otherwise must be limited to objects belonging to the political unity, the federation of the United States. Expense prohibited to the several beneficiaries, the component members, is restricted, as alone within the proper design and scope of federation, to this single "beneficiary."

The assertion is then sustained, that the phrase "general welfare" in the Constitution is restrictive, not latitudiuous, in its just interpretation; conservative, and not dangerous, as has been supposed; and that it is not only in strict consistence with, but demanded by the federal character of the Government, that the objects embraced by that phrase, and, with one exception, none other, should define the scope and attract the direction of its expenditure.

It is said that this phrase imports nothing beyond the execution of the objects of the enumerated powers. Then, why insert it, if these objects would attract the expenditure of the Government without it? Would it not, in this view, be plainly supererogatory?—its office and operation none? Its import and tenor have been shown to be pregnant with signification. Next, let its influence on other parts of the Constitution be examined.

In place of smothering this phrase, absorbing it entirely in themselves, where do these enumerated powers get authority for making the clause in any degree subservient to them—the instrument of their objects? Let this be looked into. The allegation is, that the phrase "general welfare" is only operative in subservience to the expressed powers. Where is this indication of subservience expressed in the Constitution? In what clause of the instrument to be found? Not as part of the enumeration of powers attached to them by name. Not in the clause of appropriation itself. This clause contains no reference to the enumeration, nor any part or member of it. How comes it sunk, then—extinct—in this enumeration? These difficulties are insuperable, inexplicable, in the import in question which is given to the phrase.

But there is a further and very important view. The phrase "general welfare," it has been seen, does not borrow from the enumerating clauses. Does it lend to them? Do they depend on it, not it on them, for subsistence? Their purposes can in many respects find no execution till the appropriating clause comes in, to contribute its sinew to their exertion. From them it has nothing to require, save permission to give them means of exercise and aid. How is this claim, then, on the part of these dependent powers—the case of the fable of the stomach and members of the body—to find countenance, which insists on imposing silence on their auxiliary and master? The enumerated powers are to be fed from this appropriating clause. Their title to this nurture is unquestionable. But how derived? Through this controverted, reprobated, maltreated phrase, the "general welfare." The purposes of the enumerated powers are comprehended in this phrase, and in this way only it is that they have claim on its offices, and draw their sustenance from its bosom. The objects of the enumerated powers are comprehended under this phrase "general welfare," varieties under a species, species under a genus. As parts of itself,

this phrase FEEDS these objects—not the pelican tearing its maternal breast, but the human mother, whose circulation pervades the comprehended embryo, and gives it vitality.

This phrase, then, comprehends, and, as comprehending, supplies their requirements of expenditure. They are particulars under this genus, which has been planted where it is found in the Constitution for the purpose, by including, of being authorized to supply them. But does it follow, by any necessary connexion, that these objects exhaust its faculty of directing the application of the revenues of the Government? Not at all. Suppose other objects of exactly the same character—particulars under this same genus, varying in no quality or respect—that is to say, like the enumerated objects, *involving interest which touches the whole Union, and in the point and particular of the unity*—shall not these, supposing, in the multifarious complication of human affairs and public exigencies, that such instances may have occurrence, shall these be denied a place with their homogeneous associates—excluded from their privilege of confraternity? Why one object of corporate, not common, welfare be excluded from the application of the corporate revenue, others in no respect distinguishable omitted and put aside? We have no authority to make application of money to internal improvement of character purely interior. Why? The interest of this form of these improvements is particular as respects the State in which it has location, is several as regards the States in a disjoined capacity. Why do all sane men now admit, after all the distractions of controversy on the subject, that money may be applied by the Government to the improvement of the Mississippi and Ohio rivers, running as these streams do to great depth in the interior? Because the adaptation of these rivers for commerce among the States, though their flow pervades only some States, makes their condition not an interest common to the States they pervade, but an interest of the political existence bearing the name of the United States, as unquestionably as the condition of the ocean of adaptation for commerce, is a corporate interest of the United States. Here is an instance of an interest constituting an object of general welfare, yet no expression is found in the enumeration of the Constitution to comprehend this, more than opening the harbors of ocean towns or planting light-houses on the coasts. If thousands of such objects could appear, provided they are found to fulfil with rigor—to the letter—this required character of attaching to the political "unity" the Government, why pass them over? It is for the general welfare we have constructed the system. Whatever does not belong in strictness to the category imported by this name, that we reject from the patronage of our function of expenditure. But if it does come into the category, and that fairly, on what ground postpone it to others, whose claim to patronage is but the same identically, belonging to the same class? Childishness it were, surely, to take one thing as the subject legitimate of favor, and discard the same thing precisely if not taking the same name.

Now, to make application of this reasoning to the subject in discussion. Money may be applied to the object, if its claim to belong to *generality*, not *community* of interest, may be admitted. May this object, the acquisition of exterior territory, be in any case an interest of generality? Was this the description and character of the interest when Louisiana, when Florida, were acquired? Did the preservation of the Union, in the preservation of the adhesion of the West, form an interest of gener-

ality? Was the raising an effective barrier, on the vulnerable frontier of the gulf stream, an interest of generality? Suppose Texas now, by compromise of the parties litigating for its possession, tendered to our purchase, would the extension of frontier, the composure of intestine agitation, form an interest of generality? If it would, where is the principle of the Constitution, any more than the dictate of sound understanding, which would exclude the power of purchase? Then, there is a power in the Government to introduce foreign territory in the Union by purchase.

A third source there is of this introduction, which will presently be developed.

The reply is furnished, then, to the first of the inquiries before the committee, that exterior territory can be introduced into the Union in two modes, which have been indicated.

The second inquiry succeeds: By what department of the Government may the power be exerted? With which does it reside? Which is the authority which makes the acquisition when it has been the result of successful war, conquest? To Congress is given the discretion to declare war; but it is to this office, the declaration of war, that the function of Congress in relation to it is confined. Congress may declare who is to conduct it? Not Congress in the least. Congress gives the authority, furnishes the means; but with the conduct Congress has no province of authority whatever. The progress of the war subjects the territory which may have been won and occupied. But occupation of this character gives no title to territory. It is to the termination of war, to the arrangements for peace, that title, should it be acquired, must be traced. Till peace, and recognition by the losing party, affixes the seal, title is in transitu; the case is that of possession, as distinguished from title—a distinction the most important. The department, then, to which the province belongs to obliterate this distinction, to change the condition of the possession, discharge the final office of consummation, make the possession PROPERTY, that is the department to which the acquisition and the power of acquisition is to be attributed. Territory is property; bargain is necessary to transfer. To pass, there must be agreement of several parties—terms, arrangements, conditions. Well; when these or any of them have to be entered into, transacted with a foreign political authority, there is a department assigned by our Constitution. It is made up of the head of the Executive and two-thirds of the Senate.

So, in the acquisition of territory by purchase, the condition is the same. Purchase, a bargain, and terms—engagement for the arrangement of these with the foreign authority which is to make the concession of the property—all these indicate the jurisdiction to be appropriate to the department to which the function is assigned, and assigned exclusively, of entering into engagements with foreign authority.

The conclusion would seem, then, removed beyond the reach of controversy, that territory exterior to the Union, permitted to become a part of it, can only find a lawful passage through the treaty power of the President and Senate. This department, in the reasoning which has been submitted, so far from setting up claim to an extension without limitation, or evincing avarice of jurisdiction, is presented in the character of an auxiliary only to other powers, inert, till one of these invokes its assistance. A further guaranty, too, is found for the innoxious character of this authority. And what is that? It is the representative in the Government of its conservative element, its federal characteristic.

The cases which have been stated of the authorized admission of foreign territory have been those of conquest and purchase. Let the case be considered, however, of the voluntary cession of their territory by a people or Government desiring incorporation with our political community. This case falls under a succeeding head of discussion, in which the inquiry as regards the admission mixes and becomes complicated with that of the admission of population.

May, then, a foreign population be introduced in mass into the political community of the Union? Is there a power to do this? Population, in the transfers of political subjection, follows, according to the usages of nations, the condition of the territory to which it is attached. The modes of transfer may vary. Conquest may dispose: Cession. Whatever the mode, however, the law applies, the population goes along and is embraced in the condition. If territory may be received, then so may population, its concomitant and adjunct. The committee find no room, therefore, for distinction as regards population or territory, in reference to the question of the power of the Government to introduce them into the Union.

But the population following the condition of the territory must conform to the law of its introduction—can use no other avenue. The territory, it has been seen, can find its admission only through the exercise of the power over compact. This, then, must be the mode of access of the population. Is the case that of voluntary submission of the population to us, not transfer by a superior employing his authority? The conclusion is not varied. The submission, as it will have its motive, so, too, it must have its terms and conditions, to realize the motive. Well; terms and conditions—these are the elements of compact. It is to the department in the Government, then, vested with the authority over this subject—the contraction of engagements—that population must be indebted for its admission. All views unite in the conclusion that foreign population, like exterior territory, can have passage into the Union only by the exercise of the treaty-making function in the Government; and that function is not in Congress. There is no contrivance to elude the resort, nor reasoning which may impugn the conclusion.

Of the topics proposed for examination in the outset, a single one remains. Territory, it has been seen, has an avenue of entry to the Union, and with it foreign population; may the two in combination, in the character of a State, find admission? The power is claimed for Congress to effect this result. With no intermediary probation, such as has been employed in regard to the Territories, giving time for adaptation to the new condition or evidence of its existence, the power is maintained to introduce to any extent population in a political capacity. The remark which first arises relates to the great gravity of the question raised by the assumption; any of gravity more imposing it would not be easy to state. It is in this conviction of its importance that the committee approach the discussion. In connexion with it, the joint resolution which has passed the House of Representatives, for the admission of Texas by the exercise of the power in question, is presented for consideration. The import of this measure is the recognition of Texas as a State, with no defined boundaries, with the requisition of a republican form of government, to be adopted in a prescribed form, and with the stipulation of very important conditions, on which the consummation of the arrangements is made to depend.

The committee owe to the dignity which this measure derives from its

source, no less than to that of the general question, deference the most respectful. Any criticism which their duty of examination may render necessary, will be construed, they are persuaded, into no departure from this profession of respect.

The mere aspect, then, it may be permitted to observe, of the resolution in question, is of a character to startle and awaken doubt of its propriety and policy. A joint resolution of the two Houses of Congress! To what end? To make appropriation of a neighboring foreign political State. Under what circumstances? Of any request, or intimation in any form, on the part of the State appropriated of desire to be annexed? If any such have been made, any desire revealed in the only way in which Governments are permitted to know the purposes of other Governments, none have been disclosed through the sole channel which parliamentary bodies are permitted to recognise as authority for their official action.

The proposition assumed as the basis of the most solemn form of public action is, that a neighboring State has ambition to become extinguished. Supposing the inference just, in the present instance, that Texas, solicitous for the incorporation which is to annul her separate political existence, will show no sensibility to the disregard so remarkable of the courtesy or forms of official respect—even in this supposition, is no tribute of deference due to the reputation of our own Government? Have we no terms to keep, no observances to respect, as regards the appearance we have to present to other nations, and their opinion of our proceedings? Is acquisition all, reputation nothing, in the conduct of the gravest affairs? We are in the practice daily of arraigning the habit, fast obtaining fixed root in the usage of nations, (so prompt to become their law,) of domiciliary intrusion of strong Powers in the concerns of weak Powers. Where are the people or Government to be found who have been louder in arraignment of the prevalence of this practice than ourselves? Is no precaution due to the influence which our proceeding in the mode proposed to us may exert, in laying a foundation for authority to plead our own example against us, to stifle the accents of remonstrance which we may have occasion but too often to raise? What reply will we have to employ or distinction to make in our own favor? Will ours have been, on the contrary, accompanied by room for such a distinction?

As far as the affair will stand out to the world, who are to know of no mitigating circumstances withheld from view, if there had been such, our act has been—dispensing with consultation even, not to speak of waiting for application—to assume an authority to annex our neighbor to us, dictate the conditions, and prescribe a time for their unqualified execution. Suppose the case of dissensions in a neighboring feeble State, let it be Texas, the State a prey to this last of afflictions, what would be the imputation in that case on the strong neighbor, supposing him not to instigate, yet availing himself of the debauching violence of such distractions, to accept the spoil of the country? How easily do such examples run into the worst extreme, and how important it is, therefore, that no countenance be given to public acts which may tend in any degree to their introduction.

The fact is but too notorious of the general prevalence at this moment of the lust of territorial aggrandizement among nations. The disease spreads every where. No island in the deep Antarctic so retired, no people so inoffensive, as not to be threatened with the visitation. Is not ours the duty, whilst we

exclaim, not to give color to accusation against ourselves of the character of that we are so loud to charge? These remarks are deemed not inappropriate to the subject, in a view of the fact that Texas has given no intimation in any known form; certainly in no form which, according to the usages of nations, can give authority for a proceeding so anomalous as that of our Government, not proposing terms of incorporation, but assuming, to set on foot the work of incorporation. Not the charge of irregular proceeding only, but of uncompromising pursuit of objects of aggrandizement, will be incited against the reputation of the country, and with no occasion for incurring them, as the opportunities are so obvious of proceeding in concert, if annexation be the real desire of the people in the two countries.

These observations have been made in view of the influence which the mere fact of the passage of the resolution adopted by the House of Representatives is calculated to exert, should it terminate in no practical result. The resolution, in its substance and form, asserts the principle of power in Congress to give admission to a foreign State into the Union. In deciding on that question, therefore, decision will be rendered on the claim of the proposition to adoption.

The claim for Congress to admit a formed political State into the Union, in contradistinction from its elemental parts, population, and territory, rests on a single line in the Constitution. How brief the phrase! How pregnant the import, if the widest of the interpretations claimed for it is to be adopted! To expand to unmeasured extent the dimension—to change, it may be, in extent still greater, the character and the destiny of the Republic! That this expression, large as it is, is chargeable with no extravagance, if the true import of the phrase gives it the world for its operation, no candid person will contest.

In the first view of the entire generality of the expression, "new States may be admitted by Congress," a part of the committee had been led to the inference that the clause was of a character to refuse the application of restriction. Opposed to this inference from generality of expression, was the inference, however, from the apparent enormity of pretension of a phrase so circumscribed in words, and inserted, it is to be remarked, in no important connexion in the Constitution. How could a phrase in such circumstances have assigned to it an influence of such indefiniteness and magnitude? How was the exclamation of Mr. Jefferson to be met, that, with the limits of the United States defined by the treaty of independence, the Constitution declaring itself made for the United States, it was asked to infer authority to receive England, Ireland, Holland, and the world, &c.

In this aspect of the phrase—double, as well as distorted—the committee have put themselves to inquire what the principles of interpretation are by which clauses in instruments, when breadth of construction of them suggests just cause for alarm, may be submitted to a process of alleviation and mitigation of a *prima facie* import. The fitness of the adoption of such a mitigating process cannot be contested, if it should be found sustained by the tests ordinarily employed in construction. Of these there are several of an undisputed authority, admitting application to the present case. Generality of import may find restraint by reference to the fact of adequate matter being found for operation of the debated language, independently of the revolting operation. This is the first and reasonable check on broad interpretation. The restraint which the leading object, or *genius*, of the

instrument may be found to prescribe, supplies another instance of the same character. The influence of the context—the clauses also demanding room for operation—gives a third just restraint. And no one has title to hold a higher tone of pretension in this respect than a fourth one—that of the consequences to flow from the construction. Instruments are valuable—are employed—rules of interpretation devised, and applied to them only in a consideration of the effects they are expected to operate. If these effects are found in the exhibition of evil, or peril, the principle which lies at the bottom of all institutions, that "it is to be *tried by its fruits*," comes directly forward to assert a claim to control.

Let these several tests, then, be made the subject of application to the phrase in discussion. Excluded from an operation beyond the Union, did it have, at the time of insertion in the Constitution, or does it find now, matter on which to act sufficient to authorize the inference that other matter may not have been intended for it; that this would be of extent to satisfy it? There was a large mass of territory appurtenant to some of the larger States of the Union, which an imperative national opinion destined to the formation of new States. Vermont, the Territory of Franklin, have already been the claimants to admission. The territory northwest of the Ohio, the unmeasured appendages of Georgia, presented a field almost indefinite for the operation of the clause—a range of surface in which the appetite of construction the most inordinate might be expected to find satiety. All these together furnish a sphere of operation certainly too prolific to allow monsters of construction to be bred to supply food for operation. Such is the result of the first of the proposed tests. The history of the progress of the insertion of the clause in the Constitution which has been consulted does not supply evidence decisive on the point in question. The clause was the subject of frequent debate, of several modifications. The only circumstance in any degree pregnant is furnished by the fact that the subject does not appear to have been treated at any time in reference to any exterior aspect of operation of the clause; no allusion is made to this at all, much to the circumstances connected with its influence on our domestic territory. In regard to this, it was discussed in a variety of views and relations.

The clause is next to be examined in its relation to the leading controlling object, or what may be denominated the genius of the Constitution. The recall of this object to notice is important, in relation to more discussions than the present, as a consideration which should be permitted to escape in no constitutional discussion.

What, then, is this predominating principle of the Constitution which ought to be allowed to give the first law of construction in the discussions which relate to it? The answer is, that this predominating character, this genius of the Constitution, is its federal quality, as distinguished from its national one, being, as is known, a compound of both these qualities. The States, when they proposed to combine before the Revolution; when they did combine to effect the Revolution; when, in 1787, they met for the essential office of reconstructing their political system—on all these occasions had a leading fixed purpose, however they might frame or decompose or recompose the structure. This purpose was to preserve it in conformity to the order of political architecture which they most admired—which they were resolved, in all contingencies, to observe and preserve. This order

was not Doric—rude ; not Corinthian—aristocratic : but a style compounded with artifice the most profound, as in a peculiar manner adapted to the peculiar purposes they desired it to answer. This style, so endeared to their regards, and of excellence so superior, is the *Federal*, the form of political structure under which the diversified interests of our political community can alone find shelter, permanent and effective.

*Than* the spirit of this system of federation, from causes to which allusion would be out of place, there can be none more sensitive and jealous, as it ought to. This was the spirit which predominated in the formation of the Constitution. States of very inconsiderable magnitude were determined to stand, and were permitted to stand, on the footing of an unconditional equality with the largest. That they should do so, though the most difficult arrangement of the Constitution to effect, was yet the eventual arrangement of the Constitution.

When questions of construction of the Constitution are presented for decision, it is not compromise of this character, or the spirit of jealousy from which it sprung, which is to be neglected, or allowed a slight consideration. The protection not only of a federal organization, the peculiarity of the influence of a federal temper in adjusting the arrangements of the Constitution, are to be regarded. All just construction must have this peculiarity constantly in its eye. The framers could never contemplate arrangement, the influence of which might tend to disturbance or impairment of the nice adjustment of compromise which had been wrung with difficulty, as required not more to protect inferior strength than to soothe a temperament of irritable jealousy. Can any thing be regarded as more at war with such a temper of compromise as this, than the suggestion of arrangement under which additions might be made, without limit to the number, and with no rule as regarded dimension, to the members of the confederacy? Is it to be conceived, the possibility that the influence of such an arrangement perceived, that it was going to be allowed a place in the Constitution? Can the principle of interpretation be sound which infers that, after warring for a barrier against Virginia and New York, the smaller and victorious States were consenting to a plan by which the action of the ordinary Legislature—a majority of one of a quorum in each House—should have a privilege unrestricted to let in England, Ireland, Holland, &c., in the phrase of Mr. Jefferson ; or Texas, of dimensions equal to six of the largest States ; Canada, equal (in its whole extent) to as many ; or Brazil and Buenos Ayres, defying enumeration as to their equivalents? States were not to be susceptible of division by the arrangement, except with their own consent. This consent was not to be inferred of States to be introduced from abroad—that they would submit to dismemberment as the price of introduction. Then, if the introduction was looked to, it must have been with the dimension of these new States unbroken. Are we to suppose that Delaware and Rhode Island contemplated the insertion of a clause in the Constitution of this extravagance of import and influence, and no voice raised of deprecation or expostulation ?—that these States consented " to die and give no sign?" Had they, in their delegation to the Convention employed on the Constitution, no one read in history, who could tell them of destruction brought on the only Federation which had resembled their own, the Achaian League, by the operation of this same cause, the permission to let in new members without limitation of their potency? In that sage assembly of the framers of the Constitution, were there none who were endued with sagacity

to foresee the fate of the only sound arrangement by league for the freedom of Greece, if Macedons might be brought into the bosom of our Confederacy? The difficulties of such concessions exclude the idea that import of this character was ever designed for the clause authorizing the admission of new States in the Constitution.

Then another, and the most overruling of the prescribed tests, rejects the generality of import claimed for the clause under discussion. Next comes the test by the context of the instrument: Is there another clause with whose admitted sphere the operation claimed for the clause in question must come into conflict? The Constitution gives to the President and two-thirds of the Senate the undisputed, exclusive authority to make all the engagements which may be made with foreign States. It gives to Congress the power to admit new States into the Union. It is said that this expression extends to foreign States—is wide enough to cover their introduction. Be it so. Let this be the imputed extension of this last clause. A foreign State! With what circumstances must it come in? Is not the agreement to come in an engagement between this foreign State and the Government of the United States? Can the foreign State get in, not without, but in any other manner than *in virtue* of, this engagement? Must not the contract of admission (there must be a contract) state the conditions of the admission? The foreign State would not come in till it had stipulations for a participation on an equality of condition. The United States ought to require conditions on their part; as, for example, that Brazil, coming in and covering a large part of the largest continent of the globe, should submit, as a condition, to subdivision. But if no condition of entry, but a line as short as that which conveys the contested clause in the Constitution, were employed—the foreign State is hereby admitted—yet an engagement is expressed. Coming in is itself a transfer of arrangement; that is to say, an engagement made by the foreign State with the United States.

But Congress, which might admit, let it be the foreign State, if it had the control of the only mode and organ of admission, under the Constitution, stands impeded by the want of this control. That is to say, it is required to go to the department to which has been allotted the control of this organ, and to ask its aid in the discharge of the office of admission. This department, so applied to, (supposing it to partake the wish for the introduction of the foreign State,) would have to answer to the application, we partake your desire. We wish to subserve this desire in our office. But we, in this our office, have been invested with no authority to make compact for the introduction into the Union of a political organized Power, or State. We have an authority only to introduce—to get possession of foreign territory; which may, in that condition, subordinate to the condition of a State, bring its population along with it into subjection to our Government, whose fixed rule of policy it is to elevate population introduced in that condition to equality of condition with the general population, as soon as maturity or other circumstances of adaptation may permit. In this way your object may be effected, and in this way only. The population desiring introduction must resolve itself into its elementary state—be a population and territory—but with no permanent form of political organization. Then the population can come in, and with the signal advantage to the Union, that, by probationary connexion with us, the adaptation of the population may be ascertained or formed, for the intimate relation of a perfect incorporation.

What is the reply which the power to admit States ought to have for this frankness of explanation on the part of the compact-making department of the Government? Ought it not to be acknowledgment no less frank of the impediment to the gratification of its desire, and respectful deference to its title of exclusive jurisdiction over the subject?

And here the answer is furnished to those who inquire, What! if the majority of the people of the United States desire the incorporation of Texas, and the people of Texas desire it, is the object not in these circumstances to be effected? The first part of the reply is, that this is not, as you suppose, an affair, so far as concerns the United States, of the people of the United States only; it concerns in a still greater degree the States—political bodies which compose and make up the corporation of the United States. Into this compact of incorporation they have entered on conditions, which, whether advisable or not, are now to be respected. One of these conditions is, that, for certain sufficient reasons to them appearing, there was a stipulation that, in all the affairs of the common Government which related to contracts of engagement with foreign Powers, they, the States composing the Confederacy, should have control—Powers at that time sovereign as the greatest, though not in strength, yet in independence, in the amplitude of a full equality, the compeers of the proudest. This stipulation, thus asserted, claiming for its authority the clear letter of the Constitution, shall it be resisted, overthrown, when it cannot be denied?

But the second part of the answer to the inquiry stated—can Texas in no circumstances of a common consent be admitted into the Union—what is it? Yes; Texas may be admitted. But what the condition, after the consent of her own people? The consent of our people? No; that is not enough. This of ours is not a mere nation. There is no understanding patriot who will not exclaim, God forbid it should be so regarded! A nation to all purposes exterior, having that front and character with all its fitting appendages and pretensions, in our relations at home we are not a nation, but a confederacy, under conditions, of what were several nations, till they derogated from this character by their submission to these conditions. Suppose a confederacy of States like ours, without a written law of union, stipulating conditions—a mere agreement not be inimical in peace, to stand together in war. If another State indulged desire to be admitted into this union, what would be the law of admission to which it must appeal? The consent of every member to the introduction of a new member. Is not that the law of all partnerships, received among all men, in all conditions of existence? But, subsequently to getting into partnership, or as one of the conditions of engaging in it, modification of this law may be introduced. The individuals or the States forming copartnery may say, though our right would be to stand on it, yet for a purpose of convenience, or in deference to the wish of our copartners, we agree to DEFLECT this law.

We agree that not the whole, but a majority, or a concurrence of two-thirds of the copartners, shall give the rule of admission to our fraternity. In our Constitution, this last is the rule which has been adopted. Shall it want observance? If so, where the safeguard for any thing in the Constitution? What the obligation on any part, in any provision, to its observance? If a mere majority of the people become, or becoming, as much the "*tyrant's plea*" as the allegation of inevitable necessity—if no resort be required but the allegation of this majority (which, as it may be true, so may it also be MANUFACTURED, as is notorious) for the adoption of public

measures, however they may address the diversities of interest or of sensibility in the country, then, indeed, in the phrase of Mr. Jefferson, "we have no Constitution—a paper, but a blank one." Or, rather, in such a case, we have a Constitution, but an instrument, *not* to guide or to guard us, but to smother from exposure the outrages which, in every popular form of Government, party will be found to perpetrate in the abused name of the majority of the people.

Nothing, then, can be more clear than that a foreign State, in its character of political organization as a State—if an engagement, terms, conditions, be requisite to the admission—can find no lawful passage of admission through the power of Congress; that the jurisdiction on the subject, as far as there is any jurisdiction, is an undoubted appurtenance of the treaty-making power, vested in the President and two-thirds of the Senate; that the only mode of effectuation of the admission of Texas lawfully, supposing this to be an event desirable and desired, is by the resolution of the present State of Texas into its component elements of population and territory, which may in those forms pass through the ordeal *sieve* of the treaty-making power in the President and Senate.

By this process of elaboration it is clear also that the object may be attained, and for the reason that the treaty-making power will be exerting its office, in aid of a power to "admit new States," expressed in the Constitution: that forming the condition and law of the exertion of this power under the Constitution.

Better evidence cannot be found of the justness of this reasoning than in the character of several of the measures which have been submitted to Congress in its two branches on the subject of the admission. Two of these actually adopted, *in terms*, the treaty which had been rejected last year for the annexation of Texas by the Senate, and proposed this same unaltered or unqualified form for adoption as a joint resolution, or act of Congress; that is to say, with no denial of a treaty-making function in the Government, the act which, coming, it is not disputed, regularly under the operation of this function, has been made *defunct* by its legitimate exercise, may be brought to the jurisdiction of another department, which it is not pretended is invested with any portion of that function, and animated into life, and the fullest activity which a contrary determination of the treaty-making department would have been of force to infuse into. What is the name to be given to constitutional doctrine like this, and it is found too in the category of strict construction of the Constitution? If this be a just specimen of strict, the inquiry must be instigated by an uncontrollable impulse of curiosity, what, then, is loose construction of the instrument?

That the reasoning above stated applies to the joint resolution which has passed the House for the annexation, requires, to verify it, the single remark, that this resolution not only contains conditions, but is all nothing else but an engagement or condition with Texas, on which formularies of condition the consummation of the act is made to depend.

In this connexion of the conditions stipulated by the resolution, one there is to which, as regards both its form and place, the attention of the Senate is earnestly invited. The resolution, in its closing part, has a condition inserted, not that new States must, but that they may be formed; that is, (after the admission of the new State,) "*new States may hereafter, by the consent of said State, be formed out of the territory thereof, which shall be entitled to admission under the provisions of the Federal Constitution.*"

New States may hereafter, and by consent of the present new State. This is the form of guaranty, and the extent of guaranty, provided by the resolution against a contingency which might in its occurrence, and not improbably would, pervert the entire condition in regard to its necessary internal counterpoises of the confederacy. Would New York, the name of the Empire State not inappropriately applied, in a view of the greater safety of our system, from the greater equality of the members, give consent to divest herself of a portion of her importance by division? Why should we submit ourselves to this great peril in regard to Texas, susceptible of a division into compartments equal to six considerable States of the Union? Why not let the consent on this point be peremptory, not permissive, and antecede, not succeed, the process of introduction of Texas? Is the reason that that would present the case palpable of the exercise of the power inhibited of compact by Congress? There are other considerations of much moment, and that more especially of the distribution proposed by the resolution to be made of the country between a slaveholding and a free population. This last question is of a magnitude too great to be attempted in the present report—there being considerations not connected sufficient for the passage of a judgment.

The clause of the Constitution permitting the admission of new States by Congress has now been brought to trial, by all the imposed tests of the extent asserted for it, save that of the consequences to be imputed to its enlarged operation. Let these be now looked at. The power in the extent claimed is limited only by discretion. What discretion? Whose? Of contending parties, and of "shifting," and, it may be, lean majorities in the two Houses of Congress. No zealot will refuse to admit that, in those circumstances, admission of States may come to occur from considerations not really looking to the ascertained and unquestionable interests of the country. If influence other than the purest may obtain in the councils of popular government, why should this case of the admission of new States be put out of the pale of this contingency? Are the inducements which may operate, illicit in their character, of interest or of passion, of less probable occurrence in relation to this than many other subjects which may engage the action of Congress? Is there not, indeed, peculiar room for the access of excitement, as we are at this moment giving proof? Must not the question of the reception of a foreign State be of a magnitude at all times, in all circumstances, to set afloat a sea of passions tempestuous and interests conflicting, of force to disturb always the composure of the administration of our Government—it may be, in after times, to wreck it? And corruption, too! When the freedon of Rome was first extended to the Italian cities, this was done through the arts of popularity, to gather favor and votes for elections. The peace of the elections in Rome and domestic tranquillity became the wreck. But presently the provinces exterior to Italy became the candidates for the boon. And what was the fruit then? The applicants came with the materials to gratify cupidity as well as ambition. The question of the admission of a province to the participation of Roman privileges shook the Senate. The cause was presently disclosed. The province was beggared by the application. Protection had become of more importance far than money, as costing less money, indeed, than the misrule which it averted.

These are not times, it may be said, for corruption; nor can our country be the scene. Be it so. But times change their character. Incitements,

largely or frequently addressed, work change of moral character on the pure. Are places in our Union never to be the objects of ambition to foreign States, if admission may be at any time the boon of a party, the easy achievement of legislative majorities who may want to add to their power, or signalize their lust of power, or *illustrate the fleeting fortune of a passing Administration by a trophy of distinction?*

And if allurement is sufficiently probable, under facile admission of new States, where is to be the limit to the exercise of this prerogative? Will not every country, calling itself Republican, exhibit title not to be made the subject of question. If Texas have title to admission because as free already as ourselves, will not the States which are less free, or those who, deprived of freedom, desire it, have still greater claim? What community, in which there are dissidents to the existing authorities, but can have a case to make, and to find favor, as *has been seen recently* in one of our own communities?

The *civilicide* which, in the time of Danton and Marat and Robespierre, called itself a Republic, in France, would have title fair to admission. The *anarchies* which, in the Spanish American provinces, usurp the name of Governments, and even of Republics—what bar could be opposed to their admission? Humanity would invoke this, if not policy. Then Canada, on our immediate frontier, this unhappy country, has been long the prey of a Government so oppressive that it does not permit the people to pay the expenses This country will be wanted, too, directly after the admission of Texas, to restore the deranged adjustment of the balance between the conflicting interests of the country. Then Ireland, the absorbent for so long a period of all political sympathies, hers would be the claim to stand the first, unless the transfer of her population here without her territory is to be preferred. The amount of the inference from the largeness claimed for the power to admit new States, and the want of all guards on it in the exercise by Congress, is not that it will, but, under that character of its construction, may realize the conditions of abuse which have been stated hypothetically, and let loose again the schemes of a demented temper of sympathy and fraternization in the affairs of other nations, like those with which the outbreak of the first revolution in France harassed the world.

On the direct question in issue, the power of Congress to admit Texas as a State, perhaps a single remark ought to be considered as conclusive of the controversy. The advocates of the power to admit as a State are understood not to claim for Congress the power to admit the country in the inferior subordinate condition of a Territory; that is to say, the power arrogated for Congress is to accomplish the *major*, with an admission of its incompetency as to the minor included object. The statement of this proposition leaves no further room for paralogism.

One only, and that a brief consideration, remains to be adverted to, to terminate the office of the committee. The prerogative power arrogated for Congress must prove in its exertion a plain intrusion on one of the very highest and most conservative of the functions which have been confided by the Constitution to the guardianship of the Senate. To the committee does not belong the office of invoking attention or instigating duty. With the Senate, they are well aware, this would be both impertinent and superfluous. They only advance so far as to place (which they regard their

duty) the consideration before the Senate, and then retire, as becomes the place which has been assigned them.

In conclusion, the committee have only to add, that, aware of the tangled character of the ground they would have to tread, their path has been chosen with care and trodden with caution, keeping in their eye, as a beacon and guiding light, the hallowed expression of morality and patriotism which it was their fortune to encounter, in one of the letters of the Father of his Country to an assembly of his fellow citizens:

"Without a predilection for my own judgment, I have weighed with attention every argument which has at any time been brought into view. But the Constitution is the guide which I never can abandon. It has assigned to the President the power of making treaties, with the advice and consent of the Senate. It was doubtless supposed that these two branches would combine, without passion and with the best means of information, those facts and principles on which the success of our foreign relations will always depend; that they ought not to substitute for their own convictions the opinions of others, or to seek truth through any channel but that of a temperate and well-informed investigation."

The committee having thus presented to the Senate the views which they entertain on the several questions arising from the references made to them, especially in relation to the constitutional power of Congress over the subject, it remains only to submit the following resolutions:

*Resolved*, That the joint resolution from the House of Representatives for the annexation of Texas to the United States be rejected.

*Resolved*, That the several bills and joint resolutions originating in the Senate, the resolutions of sundry State Legislatures, and the petitions and memorials of many citizens of the United States, for and against the annexation of Texas to this Union, which have been referred to this committee, do lie upon the table.