SENATE..... .....No. 87.

REPORT

ON THE

POWERS AND DUTIES OF CONGRESS

UPON THE SUBJECT OF

SLAVERY AND THE SLAVE TRADE.

The Joint Special Committee, on the petition of Asa Stoughton and others, and other petitions relating to the same subject, consisted of Messrs. ALVORD, FAIRBANKS, KIMBALL and CLARK, of the Senate, and

Messrs. BLAKE, of *Boston*,
HYDE, of *Southbridge*,
WILDER, of *Leominster*,
MERRILL, of *Lee*, and
WHITTIER, of *Haverhill*, of the House.

Commonwealth of Massachusetts.

In Senate, April 6, 1838.

The Joint Special Committee, to whom were referred the petition of Asa Stoughton and others, of the town of Gill, and many other petitions, of the same tenor, asking the Legislature to declare that Congress has the power, and ought to abolish Slavery and the Slave Trade in the District of Columbia, and the territories of the United States, and the Slave Trade between the several States of the Union; to whom were also committed the petition of Heman Humphrey and others, of the Faculty and Students of Amherst College, and many other petitions, requesting the same declaration as to Slavery and the Slave Trade in the District of Columbia; and to whom were also committed the petition of Eben. Crosby and others, of West Hawley, and many other petitions, on the subject of the Admission of New States into the Union, have considered the several matters, so submitted to them, and beg leave to

REPORT:

There is little difference of opinion in this Commonwealth as to the moral, social and political character of Domestic Slavery. It is regarded by all, or nearly all, as a wrong in itself, and an evil in all its relations and influences. There can be little dispute either as to the

degree of these qualities. The wrong is the greatest, which man can inflict upon his fellow, and the evil, deep, certain and aggravated. The only practical question here would seem to be as to the relative power of different governments over the subject, and the comparative expediency of different modes of action.

There is, happily, no slavery in Massachusetts. By the very constitution, which gave her birth as a state, she vindicated her sincerity in the cause of human freedom, by emancipating every slave within her borders.

This institution does, however, exist extensively in the Union, of which she is a member. But so far as it is confined within other states, it is a matter for their exclusive regulation, and with it Massachusetts has no power of political interference.

The petitioners admit this. They do not contend that Congress ought to abolish slavery as it exists within the several states. They acknowledge that it has no power to do so. But they insist, that the constitution has given to Congress authority, to a certain extent and in some places, over the subject of slavery and the slave trade; and that, for the exercise of this authority, for the purposes of justice and the common good, the people of this state, as of each of the states, are responsible according to the measure of their influence.

The powers supposed to reside in Congress are the following, all of which are made, separately or in combination, the subjects of these petitions:—

1st. To abolish slavery and the slave trade in the District of Columbia.

2d. To abolish slavery and the slave trade in the territories of the United States.

3d. To regulate or prohibit the slave trade between the several states.

4th. To refuse the admission into the Union of any new state whose constitution shall tolerate domestic slavery.

The petitioners ask of the Legislature to affirm the power of Congress, and the duty of its exercise, in each of the forms before stated. The committee having given to every part of the grave and delicate subject committed to them, their anxious and careful attention, proceed to state the conclusions at which they have arrived, on each branch of the subject separately, and in the order before taken; giving merely the more prominent principles and reasons, which govern their opinions, without attempting a labored argument, or pretending to a thorough discussion of either.

The first question thus presented, is, as to the *power of Congress over Slavery and the Slave Trade in the District of Columbia.*

Your committee have no doubt upon this point. They believe that Congress has over this, as over every other subject of legislation within the District, absolute and exclusive authority. This power is indeed conceded by a large majority of those who contend against its exercise; and has never, till lately, been questioned.

The complete and exclusive authority of Congress over the seat of government was deemed so important, as to be made the subject of constitutional provision. In the eighth section of the first article of the Constitution is this clause:—"The Congress shall have power to exercise exclusive legislation, *in all cases whatsoever*, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Con-

gress, become the seat of the government of the United States." April,

In pursuance of this provision cessions of territory were made by Virginia and Maryland to the United States. The act of Maryland is in these words: (Laws of Maryland, November Session, 1788, ch. 46.)

"*Be it enacted, by the General Assembly of Maryland*, That the Representatives of this State in the House of Representatives of the Congress of the United States, appointed to assemble at New York, on the first Wednesday of March next, be, and they are hereby authorized and required, on the behalf of this State, to cede to the Congress of the United States, any district not exceeding ten miles square which Congress may fix upon and accept for the seat of government of the United States."

The act of Virginia [passed Dec. 3, 1789,] after reciting in a preamble the advantages of the situation on the banks of the river "Potowmack" for the permanent seat of the General Government, enacts, "That a tract of country, not exceeding ten miles square, or any lesser quantity, to be located within the limits of this state, and in any part thereof as Congress may by law direct, shall be, and the same is hereby forever ceded and relinquished to the Congress and Government of the United States, in full and absolute right, and exclusive jurisdiction as well of soil, as of persons, residing or to reside thereon, pursuant to the tenor and effect of the eighth section of the first article of the constitution of the government of the United States.

Sec. 2. *Provided*, that nothing herein contained, shall be construed to vest in the United States any right of property in the soil, or to effect the rights of individuals

therein, otherwise than the same shall or may be transferred by such individuals to the United States.

Sec. 3. *And provided also*, that the jurisdiction of the laws of this Commonwealth, over the persons and property of individuals residing within the limits of the cession aforesaid, shall not cease or determine, until Congress, having accepted the said cession, shall by law provide for the government thereof, under their jurisdiction, in manner provided by the article of the constitution before recited."

Congress fixed upon the District of Columbia for the seat of government,—accepted unconditionally the cessions thus made by Maryland and Virginia for that purpose, and provided for the government of the district. Thus the jurisdiction of those States "over the persons and property of individuals within its limits" did "cease and determine," and they became subject to the exclusive legislation of Congress, "in full and absolute right," and as provided in the constitution.

The only exception in either grant by these states, was the unnecessary one in the act of Virginia, that it should not be construed as a transfer of "the property in the soil" from its rightful owners to the United States. As to the *jurisdiction*, the cessions by the states and the acceptance by Congress are absolute and unconditional. Indeed they could not have been otherwise, without a violation of the constitution.

Congress has, then, the same full power of legislation over the district, which belongs to any state over its own territory, with this difference only, that many restrictions are constitutionally imposed upon the Legislatures of States, which do not lie upon the power of Congress over this district.

If legislative authority is competent, anywhere or under any circumstances, to the abolition of slavery, the power belongs to Congress in its jurisdiction over the district. And that slavery is under the control of the law-making power, no one can seriously doubt. It requires, indeed, positive law for its support, and that which makes it, can unmake it also. Slavery has been abolished by legislation in at least six of the United States, in the North Western Territory by the immediate operation of the ordinance of Congress of 1787, and elsewhere by laws of England, France, Austria, Prussia, Germany, Denmark, Sweden, and almost every civilized country on the globe. It has been abolished, too, in a thousand different forms, immediately and at once, or gradually and by the destruction of its parts,—with and without compensation. And in all these different modes, the choice of which depended on discretion merely, its authority has been unquestioned. In this country, emancipation has never been accompanied, as it often has elsewhere, with compensation to the owners. Abolition here, however, has been immediate and complete but in two instances: in Massachusetts, by the constitution, and in the North Western Territory, where existing slavery was abolished by the operation of the ordinance of 1787. Both these instances were previous to the constitution of the United States. Whether, in case the slaves should now be emancipated by Congress in the district, compensation ought to be made, the committee give no opinion. Whichever way that question should be decided, Congress would still have full authority over the subject.

April,

There are those, however, who, while they admit these positions, insist that Congress, in regulating the internal affairs of the district, acts as a local Legislature,

and therefore cannot rightfully abolish slavery there, without the consent of its inhabitants. That, in this respect, the people of the district are the constituents of Congress, and their will should be binding, in the same manner and to the same extent as the will of any other constituency. Your committee cannot concur in these views. They believe that Congress holds the same character in legislating for the district, as in its other legislation—that it is a national Legislature, responsible not to the people of the district, but to the people of the United States. It is bound undoubtedly to do justice to the citizens of the district, as it is to all, and their interests should be regarded as an element in their deliberations; but their will is not paramount, and ought always to yield to the higher claims of national safety, justice and honor, when these can be advanced without injury to the just rights of any. Of these rights, Congress must be the judge, and is responsible for the exercise of its judgment precisely as in other acts of legislation.

In this respect, the situation of the people of the district is undoubtedly anomalous. But they entered into it gladly and with their eyes open, supposing that the advantages to be derived from their situation would more than counterbalance the sacrifice. For the sake of having the seat of the national government within their limits, a circumstance tending to advance their interest and increase their influence in a thousand forms, they gave up the right to a representative government, and submitted themselves to the exclusive jurisdiction of Congress as a national Legislature.

That the clause of the constitution before cited would have this effect, was well understood at the time of its adoption. It was the subject of warm discussion in the

conventions, and was attacked and defended on this ground. Amendments were proposed by some of the States, limiting the powers of Congress to particular subjects, but they were rejected or abandoned. (See Story's Comm. 96–100. 1 Tucker's Blk. App. 276–7–8. 374. 2 Elliot's Debates, 321–326.)

If authority were necessary on this subject, there is abundance at hand.

In Wheaton's Life of William Pinckney, (page 612,) will be found an opinion drawn up by that distinguished gentleman, and purporting to have been signed by himself, David B. Ogden, Thomas Addis Emmet, John Wells, Walter Jones, and Joseph Ogden Hoffman,—all of whom were among the most eminent lawyers of the country. Much of their opinion respects that clause of the constitution before cited, and they agree that the authority thus conferred on Congress over the district is entire and absolute;—that it is to be exercised by Congress as a national not as a territorial government;—that, in their own language, "the power itself is the power of the *nation*;—that the whole Union are at once the grantors and (by their representatives) the depositories of it;—that the district upon which, or with a view to which, it is exerted is entirely a national district, and that the sovereignty of Congress over it was communicated for national ends." They add in conclusion—"Nor is there any danger to be apprehended from allowing to Congressional Legislation with regard to the District of Columbia its fullest extent. Congress is responsible to the States and the people for that legislation. *It is in truth the legislation of the States and the people over a district, placed under their control for their own benefit, not that of the district, except as the*

prosperity of the district is involved in, and necessary to, the general advantage."

But this is not all. The same principle has received the sanction of the highest judicial authority in the country,—that of the Supreme Court of the United States, in the famous case of Cohens vs. State of Virginia. The ground of this objection,—that Congress in regulating the internal affairs of the district, acts as a local Legislature, was there taken by the defendants, and the opinion of the court, delivered by the lamented Chief Justice Marshall, is full and pointed against it. They declare that Congress in the exercise of this authority "is not a local legislature, but exercises this power like all its other powers in its high character as the legislature of the Union. The American people thought it a necessary power, and they conferred it for their own benefit." (See opinion 6 Wheaton, pages 424—429 inclusive: also 3 Story's Comm. 102–8: Rawle on Cons. 238–9.)

It must be unnecessary to pursue the question further. Undoubtedly this authority must be exercised with due regard to the interests of the district, and the rights of all. If slavery there were only local in its effects, the question presented to Congress would be the simple one of justice between the master and the slave, for both of these are under its protection, and have a right to be considered in its legislation. But there are *national* ends besides, of the highest importance, which may be involved in the issue. Is not the honor of the nation, its high character for justice, in the keeping of its representatives? And if it be true, that the capital of the United States should be such, that every honest citizen may go there openly and in safety, carrying what opinions he will,—if it should be such that the sacred right of freedom of speech in the

representatives of the people, may be exercised on all subjects, without danger and without fear,—who that has watched the events of the few last years, can say that the abolition of slavery in that district may not be, if it is not, imperiously demanded by these high considerations.

And can it be maintained that these obligations of this great nation lie prostrate at the feet of less than one thousand slave-holders!

There is another objection to the existence of this right in Congress, more frequently insisted upon, but less plausible, than the one just considered. It is said "that any act or measure of Congress, designed to abolish slavery in the district, would be a violation of the faith implied in the cessions by the states of Virginia and Maryland."

Where is the evidence of this faith? How and when was it plighted? Were not the cessions deliberately made, transferring jurisdiction over the district to Congress, without reserve, "in full and absolute right," and in pursuance of that clause of the constitution, which clothes Congress with power "to exercise exclusive legislation in all cases whatsoever?" Did not these states understand this? Was not the extent of the provision fully discussed in their conventions, and well known to their statesmen and people? It is not indeed pretended that this good faith is founded upon any express understanding, or that any evidence exists in word or act, before or at the cession, to countenance this singular position. The whole argument rests on the assertion that "Virginia and Maryland would never have ceded the territory, had they supposed slavery there would ever be abolished by the national government."

But what then? They made no such condition in their bargain, which was to them a valuable one. There is no

evidence that the effect of the cession upon the subject of slavery was in the mind of any one at the time; and is the right of legislation, granted absolutely in terms, to be controlled by speculations as to what would probably have been the ideas of the grantors, if their attention had been called to the subject? Is the purchaser of a farm bound, to all time, to use it only in such mode, as would have commended itself to him of whom he bought it? Massachusetts consented to the separation of Maine, and transferred all powers of legislation over her territory. Is Maine obliged to conform her political action to our wishes, or what would have been the wishes of our fathers? Is it a sufficient and conclusive objection to any legislation by her, that if the people of Massachusetts had believed she would take such a course, they would never have consented to the separation? Kentucky too, was a part of Virginia. Must she defer all action upon the subject of slavery, till she obtains the consent of her mother? We obtained Louisiana by cession from France. Can France claim to have the institutions and government of that territory controlled by her own course of policy, or conformed to what were her wishes at the time of its cession?

And yet this is the principle of the objection, if it have any principle. In its relation to the District, it cannot be confined to the question of slavery. If it be true as to that, it is as true of every other subject of legislation. And on all questions the whole duty and power of Congress as to the District, would be to record and give the sanction of law to what are or have been the opinions of Maryland and Virginia. If such were the effect of the cessions, one might inquire why were they made at all? Why might not the District have as well remained in

Virginia and Maryland? What was the great advantage of having exclusive control over the seat of government, which led our fathers to provide for it in the Constitution?

It is perhaps hardly worth while to carry the principle out into all its consequences. It would lead to infinite absurdities.

But the objection is probably as unfounded in *fact*, as it is in *principle*. There is vastly more evidence against the supposition that Virginia and Maryland would have withheld the power of abolishing slavery in the District, had the question been distinctly presented to them at the time of its cession, than there is in its support. There is something better than speculation on this subject. In 1784, Virginia ceded her territory northwest of the Ohio, to the United States. In the course of the same year, the question as to its government, came before Congress, and *Mr. Jefferson of Virginia*, Mr. Chase, of Maryland, and one other gentleman composed the committee who reported the provision that, "there should be no slavery or involuntary servitude" therein. The resolution was lost at that time, but was revived in the ordinance of 1787, and the very year of the adoption of the Constitution, passed by the unanimous vote of all the states, every member from Virginia and Maryland being in the affirmative. Why was not the implied faith discovered then? And how happens it, if their sentiments were such, as are now imputed to them, that Maryland and Virginia not only did not object to the abolition of slavery by Congress, in a territory ceded by one of them, but concurred and assisted in the very act, not only on the floor of Congress, but Virginia, at least, by express legislative enactment. With the fact before them, that Congress

had just construed a cession of territory in general terms, as investing it with authority to abolish slavery therein, would they not have stood upon their guard in respect to the District? If they meant to restrict Congress on this subject would they not have seen the necessity and felt themselves bound to make it a condition of the grant, in express terms? The absence of any such condition, in such circumstances, shows them willing that the National Government should exercise over slavery in the District, the same power it had just done in the North Western Territory.

The idea that these states would have objected to the jurisdiction of Congress over the subject of slavery from the fear of its abolition in the District, not only has no countenance in any act of either of those states at that period, but is contradicted by the well known opinions of nearly all their public men—of Washington, Jefferson, Patrick Henry, Wythe, Lee, Tucker, McHenry, Chase, and others, all of whom were not only openly opposed to slavery in the abstract, but looked forward with earnest desire and strong hope for its early abolition, by public law, in their own states and throughout the Union.

But, on the principle of this objection, the understanding of the one party to the cession is not sufficient to qualify the effect of its express provisions. It must appear that this understanding was known and assented to by the other. The faith must be mutual. Now where is the ground for supposing that when Congress accepted the cessions, as they were made, of unqualified and unconditional jurisdiction, they consented that this grant should be clogged with conditions and qualifications which not only contradicted its terms, but were destructive of its object?

But this question is decided by a higher power than the will either of Virginia and Maryland on the one hand, or of Congress on the other,—the power, the will of the people of these United States as expressed in their Constitution. That Constitution made express provision that Congress should have exclusive legislative power over the District "in all cases whatsoever." *They*, at least, understood this provision in its broadest sense. They refused all restrictions either upon its subjects or extent. No state had a right to grant, and Congress had no right to accept any territory, for this purpose, unless it was made the subject of this universal and exclusive legislation. Any informal understanding, any "implied faith," that an express grant should be construed, in contradiction not only to its own terms, but to the fundamental law of the people, would be in fraud of their rights, and a violation of their constitution. This objection then to the legislation of Congress, has neither principle nor fact for its support.

Your committee are therefore unanimously of opinion, that the power to abolish slavery and the slave-trade in the District of Columbia, does reside exclusively and absolutely in Congress:—that Congress is the depository of this power for national, as well as local purposes, and may exercise it, with a regard to the rights of all, independently of the will and interests of any particular district or state, excepting so far as these are elements of the national will and prosperity:—and that for the wise and just use of this authority, its members are responsible (politically) not to the people of the District, or of Virginia or Maryland, but to the whole people of the United States, whose representatives they are.

Your committee are also of the opinion, as individuals,

that Congress ought immediately to exercise this power in the total abolition of slavery in the District of Columbia. If slavery be, as they believe it to be, a wrong and an evil, irreconcilable with the principles of natural justice and humanity, forbidden by the precepts of Christianity, and at war with the free principles of our government, they cannot well see how the duty can be separated from the power. They see no justification of its continuance, in the fear of consequences which are often connected with the idea of emancipation there. They believe that none of those consequences would follow: and to act in reference to some of them, would be to prostrate the independence and freedom of action in one part of the Union, to the dictation of the other. Congress should act wisely and kindly in this matter, but it should act firmly also, and in accordance with its own sense of justice and duty.

Thus far, the committee were unanimous. But they are divided upon the question whether it is expedient, at the present time, for the Legislature of Massachusetts, to make a formal declaration of the duty of Congress, and enjoin the same upon the members from this state. And a majority are not satisfied that such a course, which would undoubtedly be without immediate success, is demanded by the present condition of the question, or would tend to the final advancement of the cause of justice and humanity. They think that, with the declaration of the right, the Legislature should under the circumstances, leave the expediency, the time and the manner of its exercise, to those with whom it is constitutionally entrusted. (The chairman and three of his colleagues dissent from the conclusion of the majority of the committee as to the inexpediency of a declaration by the Legislature.)

Your committee are, however, unanimously, of opinion, that it is expedient that Massachusetts should declare her sentiments on the *slave trade* as it is now carried on in that district. It is singular, indeed, that the chosen seat and sacred inclosure of the national government should be the great slave mart of the country, where men, women and children are made, by thousands, the subjects of a most odious and detestable traffic, which in another form, scarcely more inhuman, is stamped as a felony and punished with death; which in this, must excite the abhorrence and disgust of every lover of humanity, and make every true-hearted American, who understands and feels the obligation of the principles which he professes, hang his head in shame. That the District of Columbia, the soil peculiarly consecrated to freedom, in this land of boasted liberty, should be polluted by the presence of chains and fetters; that its public and private prisons should be yearly filled with thousands of human beings, who have been torn, and for no crime, from their old associations, often, too, from their wives and husbands and parents and children, to be, in the sight of the very capitol, sold like beasts into hopeless bondage; and that all this should be authorized by the government of the United States, is indeed "the most monstrous anomaly to which human inconsistency has ever given birth."

The committee will not present, at length, the evidence of the extent and enormity of this merchandize in men, as it is carried on in the District of Columbia, or examine its revolting details. If any one is desirous of farther knowledge upon the subject, they refer him to the excellent speech of Mr. Miner, of Pennsylvania, delivered in Congress Jan. 9, 1829, in support of his well

known resolution,—to the remarks of John Randolph, of Virginia, on presenting his resolution of inquiry into "the existence of an inhuman and illegal traffic in slaves carried on in and through the District of Columbia,"—to a memorial to Congress in 1828, signed by eleven hundred citizens of the district, embracing the judges of the circuit court there, nearly all of its most distinguished men, and the owners of more than half of the property in the district,—to the representation of the grand jury of Alexandria, in 1822, presenting the slave trade in the district, as "a grievance demanding legislative redress,"—to another similar representation of the grand jury of Washington to the committee on the district in January, 1830,—and to the recent speech of Mr. Slade, of Vermont.

The committee will, however, submit short extracts from the memorial of the citizens of the district, and the representation of the grand jury of Washington.

The memorial thus describes the traffic and its consequences:

"While the laws of the United States denounce the foreign slave trade as piracy, and punish with death those who are found engaged in its perpetration, there exists in this district, the seat of the national government, a domestic slave trade scarcely less disgraceful in its character, and even more demoralizing in its influence. For this is not, like the former, carried on against a barbarous nation; its victims are reared up among the people of this country, educated in the precepts of the same religion, and imbued with similar domestic attachments.

"These people are, without their consent, torn from their homes; husband and wife are frequently separated and sold into distant parts; children are taken from their

parents, without regard to the ties of nature; and the most endearing bonds of affection are broken forever.

"Nor is this traffic confined to those who are legally slaves for life. Some who are entitled to freedom, and many who have a limited time to serve, are sold into unconditional slavery; and, owing to the defectiveness of our laws, they are generally carried out of the district before the necessary steps can be taken for their release.

"We behold these scenes continually taking place among us, and lament our inability to prevent them. The people of this district have, within themselves, no means of legislative redress; and we therefore appeal to your honorable body, as the only one invested by the American constitution with the power to relieve us."

In the representation of the grand jury of Washington, January, 1830, through their foreman, it is said:—"the district is made a market for the purchase and sale of great numbers of slaves, annually brought here for that purpose. These wretched beings are frequently seen passing through our streets, like droves of cattle, to houses of deposite, set up and maintained for that purpose. The inhuman practice is so shocking to the moral sense of the community, as to call loudly for the interposition of Congress."

This evil has been constantly increasing, for many years, and it is believed to require vigorous action on the part of those states, who would free themselves from its responsibility.

Slavery in the Territories.

Many of the petitioners ask the Legislature to declare that Congress has the power to abolish slavery in the

territories of the United States, and that this power ought to be immediately exercised.

That the general power of legislation over the territories, exists, as insisted on by the petitioners, none of the committee have the slightest doubt. It not only belongs to the government of the United States as a necessary incident to its sovereignty, in those places within its jurisdiction which are deprived of the benefits of state government, but is expressly recognized and provided for by the constitution. In the 3d section of the 4th article is this clause:—"The Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory and other property belonging to the United States." This has always been construed, and according to its obvious meaning, to include a right of exclusive legislation over the territories, which may be transferred to another body, or exercised directly by Congress. Judge Story says, "The power of Congress over the public territory is clearly exclusive and universal, and their legislation is subject to no control, but is absolute and unlimited, unless so far as it is affected by stipulations in the cessions, or by the ordinance of 1787, under which any part of it has been settled." (3 Story's Comm. 198. See also Rawle on Const. 237. American Ins. Co. *v.* Carters. 1 Peters R. 511.) As the only territory, in which slavery exists, is not subject to either of these exceptions, the entire control of its institutions belongs to Congress, subject only to the general provisions of the constitution. Slavery, as existing there, being matter of legislation, is then tolerated and upheld by Congress, and may be removed at its pleasure. And when we remember, that the ordinance of the old Congress of 1787 was in view of the framers of the constitution, and the people, who adopted

it, it cannot be doubted, that the power over slavery in the territories was granted understandingly, and with a full knowledge that it might, and indeed was likely, to be exercised.

But while the committee are unanimously of this opinion as to the right, and would by no means deny the duty of Congress to abolish slavery in the territory of Florida, where it exists, a majority of them are led to the same conclusion, as to a declaration of opinion by the Legislature, and for the same reasons, which they have already expressed in relation to the District of Columbia.

The Slave Trade between the States.

Another prayer of one class of the petitioners, is, that the Legislature should declare, that "Congress have the right to abolish the slave trade between the states," and that "it ought immediately to exercise it."

This is, perhaps, the most important power which is attributed to Congress, over the subject of slavery, and yet it has not often been discussed. Some of your committee had doubts upon this subject, at the commencement of their investigations, but the result of their individual study, and interchange of opinions, has been to remove those doubts, and they are unitedly of opinion, that Congress does possess the power to regulate or entirely prohibit, at its discretion, the trade in slaves, as in any other article which is made the subject of commerce, between the different states.

They are able to give their reasons for this opinion only very briefly and imperfectly. The power is expressly given to Congress by the constitution (Art. 1, § 8,) "to

regulate commerce *with foreign nations, and among the several states, and with the Indian tribes.*"

It has been decided, that the word "*commerce*," as used in this section, embraces "the buying, selling, and interchange of commodities, as well as navigation and intercourse." Indeed, the justice of the first branch of the definition has never been doubted, and the question which was made in regard to the last, has been settled by the supreme court of the United States. (Gibbons *v.* Ogden, 9 Wheaton's R. 189. Brown *v.* Maryland, 12 Wheaton's R. 446. 2 Story's Comm. 506, et. seq.)

Commerce, therefore, between the states, in the purchase, sale, and interchange of every thing, which is rightly or wrongfully made its subject, may be regulated by Congress. And this regulation may be, either by the prescribing of rules for the government of trade and intercourse, or by the entire prohibition of any particular species of traffic between different states, or the transfer of any particular class of persons and commodities from one state to another. These principles seem to be abundantly settled, and upon the best of reasons.

It is to be remarked, also, that precisely the same power is given to Congress, and in the same words, over commerce between the states, and over commerce with foreign nations. If then it can prohibit the foreign slave trade by virtue of this clause, it can, as certainly prohibit the domestic inter-state slave trade. The first power it has exercised, without question, and on what principle can the last be denied?

The argument is briefly and clearly stated in a memorial, prepared and presented to Congress, on "the prohibition of slavery in the new states," in 1819, in behalf of the citizens of Boston. The names of the committee

borne upon the memorial are *Daniel Webster, George Blake, Josiah Quincy, James T. Austin,* and *John Gallison.*

"The Constitution declares," say they, "that the migration or importation of such persons as any of the states, now existing, shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808. It is most manifest that the Constitution does contemplate, in the very terms of this clause that Congress possesses the authority to prohibit the migration or importation of slaves; for it limits the exercise of this authority for a specified period of time, leaving it to its full operation ever afterwards. And this power seems necessarily included in the authority which belongs to Congress, to regulate commerce with foreign nations *and among the several states.* No person has ever doubted that the prohibition of the *foreign* slave trade was completely within the authority of Congress since the year 1808. And why? Certainly only because it is embraced in the regulation of *foreign commerce,* and if so it may for like reason be prohibited, since that period, *between the states.* Commerce in slaves, since the year 1808, being as much the subject of regulation as any other commerce, if it should see fit to enact that no slave should ever be sold from one state to another, it is not perceived how the constitutional right to make such provision can be questioned."

The committee have heard of but two objections to this view of the question, both of which they will briefly notice.

It is said, in the first place, that the power to *regulate,* is not a power to *destroy,* and that under this authority, therefore, Congress may prescribe rules for the govern-

ment of trade and intercourse, but cannot prohibit them. It may tax and govern, but it cannot annihilate commerce.

But may it not interdict trade in a particular article or class of articles? This is the question here. If it cannot, then certainly the law against the foreign slave trade is unconstitutional, for the objection would apply as well to the foreign as the domestic slave trade. Neither of them could be prohibited according to this principle, and the men are innocent sufferers under a void enactment, whom we hang as pirates.

The objection is undoubtedly borrowed from that which was made against the embargo law. (Act 22 Dec. 1807.) Even, if these were parallel cases, and the same principle was applicable to both, the objection would fail, for the constitutionality of the embargo has been affirmed in all the judicial decisions, and is now generally admitted. (United States *v.* Brigantine William, 2 Hall's L. J. 255. Sergeant's Const. law, 306. 2 Kent's Comm. 405. 2 Story's Comm. 509, 161-2-3. Gibbons *v.* Ogden, 9 Wheaton's R.)

But the objection does not even derive countenance from the opinions of those, who maintained the want of power in Congress to pass the embargo. They admitted, that Congress might prohibit trade in any particular species of commerce, not embracing all its articles, *or* might prohibit it as to any particular place, *or* for a limited time—and they objected to the embargo only because it was a *perpetual* act, against *all* foreign commerce, of every kind, and this they said was "*annihilating*," not "*regulating*" commerce. But their admission would include the right now under discussion, and their doctrines, instead of denying, would affirm the authority of Congress to interdict the *foreign* slave trade, and the same trade between the

states, for this would be the prohibition "of a particular species of commerce," and not of all commerce. (See former references.)

It is said, again, that Congress cannot exercise this power over commerce in the suppression of the slave trade, without a violation of the spirit of the constitution, because it was given to be used only for *commercial purposes*.

This narrow construction has little foundation in fact, reason or authority. It would not only stamp the act prohibiting the foreign slave trade as an usurpation, but render void nearly every enactment by Congress, relating to commerce.

Mr. Justice Story, in his commentaries, (vol. 2. pp. 518-19,) enumerates some of the objects and purposes to which the power to regulate commerce may be constitutionally applied. Among these are revenue, *prohibition*, retaliation, *the laying of embargoes*, mere political purposes, the encouragement of manufactures, quarantine, &c. &c. "In all these cases," he says, "the right and duty of Congress have been conceded to the national government by the unequivocal voice of the people," and yet hardly one of them is simply commercial. "A power to regulate commerce," says Mr. Justice Story again, "is not necessarily a power to advance its interests. It may in given cases, suspend its operations, or restrict its advancement or scope." (2 Comm. 531.)

In the language of Judge Davis, (2 Hall's Law Journal, 273,) "The power to regulate commerce is not to be confined to the adoption of measures exclusively beneficial to commerce itself, or tending to its advancement, but in our national system, as in all modern sovereignties,

it is also to be considered as an instrument for other purposes of general policy, and interest."

These principles, which are decisive against the objection last named, are founded in sound rules of construction of the constitution, and in accordance with the expressed intention of its framers, and have been adopted hitherto in the practical administration of our government.

Your committee are all of opinion, that this power ought to be exercised by Congress, in the suppression of the slave trade between the states—a trade, which has grown up almost entirely within a comparatively late period, and is admitted to be justly odious in its character. Over this trade Congress not only has the control, but it has it *exclusively*. The states, between whom it exists, can have no effective power over it, but must look to the general government for the removal of its evils. The statesmen in Virginia, particularly, have expressed the greatest abhorrence of its common and necessary features, but although she might not plead the exemption, and may be jealous of what she might call federal interference, yet it is nevertheless true, that Virginia, as a state, is not responsible for any considerable share of the evil, even as exhibited within her own borders. The government of the United States is responsible, for with her only is the power adequate to its suppression.

Up to the year 1820, it would seem that the slave trade, which has since been so vigorously carried on between the north-eastern and south-western of the slave states, was hardly known. The statesmen of Virginia were sensitive at any suggestion that this proud Commonwealth should ever habitually supply the subjects of such a traffic. The following remarkable passage in the admirable speech of John Sergeant, of Philadelphia, on the Missouri ques-

tion, will show something of the state of feeling on the subject. In comparing the prophecy with what has since become fact, one is almost led to wonder at their striking coincidence. (See 18 Niles' Register, 384.) "All liberal minds in all parts of the Union, have with one voice agreed in the necessity of abolishing that detestable traffic in human flesh, the slave trade—*the foreign slave trade.* But, reject the amendment on your table, admit Missouri without restriction, and you will inevitably introduce and establish *a great inland domestic slave trade*, not, it is true, with all the horrors of the middle passage, nor the cold-blooded calculations upon the waste of human life in the seasoning, but still with many of the odious features and some of the most cruel accompaniments of that hateful traffic. From Washington to St. Louis may be a distance of one thousand miles. Through this great space and even a much greater, you must witness the transportation in slaves with the usual appendages of hand-cuffs and chains. The ties of domestic life will be violently rent asunder, and those whom nature has bound together suffer all the pangs of an unnatural and cruel separation. Unfeeling force, stimulated by unfeeling avarice, will tear the parent from the child, and the child from the parent, —the husband from the wife, and the wife from the husband. We have lately witnessed something of this sort, during the period of high prices. Gentlemen of the south, particularly those from Virginia, who speak of their slaves as part of their family, would start at this. They would reject with scorn and indignation even a suggestion that they were to furnish a market for the supply of slaves to the other states. * * But can any one tell what cupidity may win or necessity extort? No man is superior to the assaults of fortune; and if he were, the stroke of

death will come, and break down his paternal government, and then the slave dealer, whom he would have kicked from his enclosure like a poisonous reptile, presents himself—to whom? He cannot tell!"

How graphic is the picture, and how exactly has the prediction been fulfilled!

Very soon after this, the active trade in slaves, which Mr. Sergeant had foreseen, commenced, and has been steadily increasing ever since. In Niles' Register for 1829, (published at Baltimore,) we find the following testimony—(Vol. 35, p. 4.) "Dealing in slaves has become a *large business.* Establishments are made at several places in Maryland and Virginia, at which they are sold like cattle. The places of deposit are strongly built and well supplied with iron thumb screws and gags, and ornamented with cowskins and other whips—oftentimes bloody."

In 1836, this trade, from well known causes, was greatly stimulated, and probably in that year alone more than *one hundred thousand* human beings in the northern slave, holding states were sold to strange masters to be carried to the south-west. In Virginia alone it is estimated by intelligent men, that at least forty thousand were thus sold.

The committee will not trust themselves to give a description of the horrors of this traffic in their own words. But surely they cannot be accused of harshness, or extravagance, if they quote the language of distinguished gentlemen of the south, giving their estimate of its cruelty and wrong.

The subject was discussed in the debates of the Virginia Legislature, in 1832, and none denied the cruel character of the trade. Mr. Thomas Jefferson Randolph,

then and now a popular and influential member of the Legislature of that Commonwealth, thus describes it: "It is a practice, and an increasing practice in parts of Virginia, to rear slaves for market. How can an honorable mind, a patriot, and a lover of his country, bear to see this ancient dominion, rendered illustrious by the noble devotion and patriotism of her sons, in the cause of liberty, converted into one grand menagerie, where men are to be reared for the market like oxen for the shambles. Is it better—is it not worse than the (foreign) slave trade,—that trade which enlisted the labor of the good and wise of every creed and every clime to abolish? The (foreign) trader receives the slave, a stranger in language, aspect, and manner, from the merchant, who has brought him from the interior. The ties of father, mother, husband, and child, have already been rent in twain; before he receives him, his soul has become callous. But here, sir, individuals, whom the master has known from infancy, whom he has seen sporting in the innocent gambols of childhood—who have been accustomed to look to him for protection, he tears from the mother's arms, and sells into a strange country,—among strange people,—subject to cruel task-masters."

The limits of the committee, will permit them to quote one more only of the many descriptions of this traffic, by those who best know its character. The following is from the Address of the Presbyterian Synod of Kentucky to the churches, in 1835: "Brothers and sisters, parents and children, husbands and wives, are torn asunder, and permitted to see each other no more. These acts are daily occurring in the midst of us. The shrieks and the agony often witnessed on such occasions, proclaim with a trumpet tongue the iniquity and cruelty of the system.

* * * There is not a neighborhood, where these heart-rending scenes are not displayed. There is not a village or road that does not behold the sad procession of manacled outcasts, whose chains and mournful countenances tell that they are exiled by force, from all that their hearts hold dear."

If the truth of these pictures is admitted, (and who will deny it?) who can doubt, that the duty of removing the evil is imperative? And if Congress is the depository of the only power, adequate to this object, can it refuse to exercise it without incurring a responsibility, too heavy to be lightly thrown off, and too sacred to be neglected without guilt.

All the committee are of opinion, that the prohibition of this odious trade has become the solemn duty of Congress—and a majority believe, that it is required of Massachusetts, that she should, through her Legislature, make a declaration of her sentiments upon this subject.

The Admission of New States.

Another class of petitioners request a declaration of the Legislature of Massachusetts, that "no new state ought to be admitted into the Union, whose constitution shall tolerate domestic slavery." Massachusetts, as well as her sister states of New York, Pennsylvania, New Hampshire and others, has, on another occasion, some years since, made the declaration, and such, undoubtedly, is the well settled opinion of her people. The committee are unanimously of opinion, that circumstances exist, which render the renewed expression of this sentiment expedient, if not an imperative duty.

The committee have now considered all the subjects committed to them, and submit, as the result of their deliberations, the accompanying resolves:

1. Relating to slavery and the slave trade in the District of Columbia, and territories of the United States.

2. Relating to the slave trade between the different states.

3. Relating to the admission of new states into the Union.

The subjects have been separated into classes, to prevent the embarrassment always attending the combination of questions involving different principles, and so that each may be submitted, by itself, to the consideration of the Legislature.

The committee have thus completed their labors, which, though arduous, have not been uninstructive. The result is with the Legislature. It is highly important, that the precise boundary between the powers of the national and state governments, on this subject, should be defined and established. It is said, indeed, that, if the powers, which we have considered, should be exercised by the federal government, they would be followed by attempts to use the same authority to abolish slavery in the states. There can be no ground for such a suggestion. It is admitted by all, that, over slavery in the states, the national government can have no control, and it is a singular argument, that the exercise of an authority constitutionally granted, would be a precedent for usurping a power which is withheld.

It is said, too, that national action upon these subjects, will have a tendency to overthrow the institutions of the south—by enlisting the moral sentiment of the country against them. If by this it is meant, that the deliberate

testimony of the nation against slavery, expressed in its public acts, might lead to the accumulation of a strong moral power in the nation, generally, and probably in the south itself, against the institution every where, there may be much truth in the assertion. But, even if it would be wrong to regard this *incident* as an *object*, it certainly is not a *result* which furnishes any argument against an act which *in itself* is required by national justice, consistency and the common good. The south might just as reasonably have demanded of Pennsylvania and the other northern states, that they should not have abolished slavery, or object to the discussion, in view of the same result, which is now going on in Kentucky, because it would create a public sentiment against them, as, for the same reason, to oppose the exercise by Congress, of the authority, with which the constitution has invested it, and from the great responsibility attached to which, it cannot, if it would, be free.

All which is respectfully submitted.

For the committee,

JAMES C. ALVORD, *Chairman.*

RESOLVES

Relating to Slavery and the Slave Trade in the District of Columbia, and Territories of the United States.

Resolved, That Congress has, by the constitution, power to abolish slavery and the slave trade in the District of Columbia; and that there is nothing in the terms or circumstances of the acts of cession by Virginia and Maryland, or otherwise, imposing any legal or moral restraint upon its exercise.

Resolved, That the inhuman traffic in slaves, carried on in and through the District of Columbia, is a national disgrace and a national sin; and ought to be abolished.

Resolved, That Congress has, by the constitution, power to abolish slavery in the territories of the United States.

Resolved, That His Excellency the Governor be requested to forward a copy of these Resolves to each of our Senators and Representatives in Congress.

RESOLVES

Relating to the Slave Trade between the States.

Resolved, That Congress has, by the Constitution, power to abolish the traffic in slaves, between different States of the Union.

Resolved, That the exercise of this power is demanded by the principles of humanity and justice.

Resolved, That his Excellency the Governor, be requested to forward a copy of these Resolves, to each of our Senators and Representatives in Congress.

RESOLVES

Relating to the admission of new States into the Union.

Resolved, That no new State should hereafter be admitted into the Union, whose constitution of government, shall permit the existence of domestic slavery.

Resolved, That his Excellency the Governor, be requested to forward a copy of these Resolves to each of our Senators and Representatives in Congress.