A Study of the Lecompton Constitution in the Senate of the Thirty-Fifth Congress

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A Study of

THE LECOMPTON CONSTITUTION IN THE SENATE OF THE THIRTY-FIFTH CONGRESS.

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Lawrence Kansas.

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CALENDAR OF THE KANSAS QUESTION IN THE SENATE.

December 8th. I857.- Congress convenes. President's Annual Message read and objections are raised by Sen. Douglas to portions therein relating to Kansas. Thid action, though conducted technically as a consideration of the President's Message, throws into open discussion the general conditions of Kansas affairs. In this connection the Kansas Question was discussed,Dec.9,I6,2I,22,23, Jan.4,5,II,I8 I9,2I,25, Feb.9,I6, and finally disposed of Mar.24.

Dec.I8.- Sen.Douglas introduced a bill (SI5) authorizing the people of the Ter. of Kansas to form a constitution and state government preparatory to their admission.

Action- Read twice and referred.(1)

Jan.4.- Sen. Pugh introduced a bill to provide for the admission of Kansas into the Union.(S37)

Action- Read twice and referred.(2)

Feb.2- President submits the Lecomption constitution together with a Special Message.The latter is considered in lengthy debateFeb.3, 4, and is finally refeerred to the Com. on Ters. Feb.8.

Feb.I8- Sen. Green from the Com. on Ters. reported a bill(SI6I) for the admission of Kansas and submitted also the Majority REport Sen. Douglas submitted the Minority Report and Sen. Collamer read

4. Sen. Journal p.51.

5. Ibid.p.74.

the Views of the Minority.

Feb.24- The bill read the second time and considered as in aCommittee of the Whole.

Mar. I- COnsideration of the bill resumed.

Mar.2- An amendment offered." A bill for the admission of the state of Kansas and Minnesota into the Union." Later withdrawn.

Mar.3- Consideration of the bill resumed. Also on the 4,8,9,I0,II, I2, I3,I5, I6,I7,I8,I9,20,22, and on the 23,Sen. Green amended the bill to insert the provision"that nothing in this act shall be construed to abridge or infringe any right of the people of Kansas(as asserted in the constitution of Kansas) at all times to alter, reform, abolish their form of government in such manner as they may think proper, Congress hereby disclaiming any authority to intervene or declare the construction of the constitution of any state except to see that it be republican in form and not in conflict with the Constitution of the United States."-Carried.

Sen.Crittenden amended to strike out all after the enacting clause and inserting a proposition to submit the Lecomption constitution to the voters of Kansas. If accepted,state to be admitted by Presidential proclamation. If rejected,state authorized to form another constitution. Same Land Grants as made to Minnesota. (1)

-Voted down.

Bill passed.

(Apr.I- House substitutes the Crittenden-Montgomery amendment.)

Apr.2- House amendment considered and by a vote of 32-23,Senate voted to disagree with the amendment.

(Apr.9- House adheres to its amendment.)(3)

Sen. Journal.p.278.

For proceedings in the House see House Journal pp.555-572.

See House Journal pp.597, 604.

Apr.I3- Senate replying to a message from the House that it adheres to its amendment insists upon its disagreement and asks for a Committee of Conference. Messrs.Green,(D),Hunter (D), and Seward (R) appointed.

(Apr.I4- By the casting vote of the Speaker, the House acquiesces in a Com. of Conference and appoints Messrs. English(D),Stephens(D) and Howard (R).)

Apr.23- Sen.Green submitted the report of the Com. of Conference together with the "English Bill".

Apr.26- Report considered. Resumed on the 27,28, 29, and on the 30 concurred in.

May 4- Approved by the President.

Part I.

BRIEF HISTORY OF KANSAS AFFAIRS LEADING UP TO LECOMPTON.

The first territorial legislature submitted to the people of Kansas in October 1856, the question of the expediency of forming a state constitution. There being a favorable vote upon the question, the legislature of 1857 accordingly took up the matter and on Feb. 19th. presented a bill to Gov. Geary. The measure thus formed had made no provision for a submission of the constitution when drafted to the people for ratification and Gov. Geary vetoed the bill upon upon that ground. It was, however, passed over his head by a two-thirds majority and so became a law. This impolitic act upon the part of the legislature alienated the Free-State element from later participation in the voting upon it. On June 15th. at the election for delegates to the constitutional convention, only 2071 ballots were cast out of the 9251 names registered very imperfectly in pursuance with the authorizing act. The convention, entirely pro-slavery assembled at Lecomption September 1857 and without transacting any business adjourned until Oct. 19th. Meanwhile the Fall elections had occured. On Oct. 5-6, the Free-State party repaired to the polls en masse and as a result of their discretion secured control of the new legislature; though not however until Gov. Walker had rejected the fraudulent returns of Oxford, McGee, and Kickapoo.

By Nov. 7th. the convention in session at Lecomption had finished its labors. Direct submission of the constitution for popular ratification, after a heated discussion prolonged for several weeks had been denied by the convention, and in its place

Reasons assigned for adjournment:

Leavenworth Herald Sept.26th.: "The convention adjourned to give the committees time to examine and obtain all the information they can and report upon the different subjects of the constitution. No rooms could be had at Lecompton for the sitting of the various committees. With these disadvantages it could not be expected that members were willing to remain there and pay $14 per week for board."

Covode Investigation p164: "The convention met first in June, and partially organized; an election was then pending for a delegate to Congress and the members of the legislature; they all wanted to go into the canvass, and so they adjourned to meet again on the 19th. of Oct.;no business was done at the first meeting."

had been substituted as a compromise an anomalous form of submission:"The Constitution with Slavery," and "The Constitution without Slavery." Upon this proposition, the people were to vote Dec. 21st.Such a wilful subversion of popular wishes could not fail to fan up intense indignation, and to meet the emergency, Acting-Governor Stanton (1) summoned the newly elected legislature to convene in extra session. By this body, a law was passed submitting the constitution for popular approval at an election to be held Jan.4th.1858-the date on whichelection for the state officers under the new constitution had by that instrument been provided.Once more the Free-State part rallied to the polls;Lecompton was hopelessly defeated, and a Free-State ticket was elected. This bye-election for state officers was a distinct election held under the authority of the Lecompton constitution and the Free-State people by participating in it laid themselves open to the charge of recognizing the validity of constitution they were rejecting at the other polls.(2) The authorities in power refused to recognize the validity of the last election and the constitution was presented to Congress.

(1) Gov.Walker had resigned Dec.13th.

(2) SeeWilson Globe 547; Views of Minority-Sen.Rep'ts p.87.; Stuart Ap.177; Buchanon,Messagesp478.

THE LECOMPTON CONSTITUTION IN THE SENATE.

The Thirty-Fifth Congress convened on Dec.7th.1857.In the Senate there were 37 Democrats,20 Republicans, and 5 Native Americans.The attitude assumed by the administration toward the Kansas question- a position which made Kansas and Slavery synonomous- had split the Democratic delegation; and the Senate, composed of the ablest representatives of the rival sections,was arrayed in two hostile camps.The prominent opponents of the forthcoming constitution were:Wm. Fessenden(Me.),Hannibal Hamblin (Me.), Jacob Collamer (Vt.)Solomon Foote (Vt.),John P.Hale (N.H.), Henry Wilson (Mass.),Benj. Wade(O) Stephen A.Douglas (Ill.), Lyman Trumbull (Ill.),John J.Crittenden (Ky.), Wm.H.Seward (N.Y.), and John Bell (Tenn.) Chas. Sumner, though a member of the Senate, by reason of his infirmities made no speeches. Opposed to these and prominently identified with the slavery constitution of Kansas were: Jas.S.Green (Mo.), Jas.Mason (Va.),R.M.T.Hunter (Va.),Robert Toombs (Ga.),S.R.Mallory (Fla.), Jefferson Davis (Miss.), J.P.Benjamin (La.),John Slidell (La.), Pugh(o), Bigler (Pa.). Andrew Johnson (Tenn.) though not prominently identified with the measure, spoke and voted withthe South.

On Dec.8th. the President's Message was read and hardly had the clerk ceased, before Sen. Douglas arose to object to those portions that related to Kansas affairs.Reply was provoked by these references and in a few minutes the great question which had palsied the proceedings of the preceeding Congress was well under way. In these first forensic tilts, the lines of later argument were

shadowed forth. Even before Congress met, it was generally understood that the admission of Kansas under the Lecompton constitution was to be made the leading administration measure; but before this intention had even been intimated upon the floors of Congress, Sen. Douglas had shrewdly commented upon the great significance of the fact that though the President had in his message indicated a willingness to sign a bill admitting Kansas, yet he had refrained from any indorsement of the convention and from any recommendation as to the course Congress should pursue with the constitution there formed"[1], and hence concluded that the admission of Kansas could not be considered an administration measure. By reason of his defiance to the administration on the one hand, and on the other of his authorship of the doctrine that had produced the confusion in Kansas, Sen. Douglas was assailed bitterly from all sides[2]; but in the masterful defense of his new position, he proved himself to be by far the most skilful debater in the Senate. THE "Lecomptonites" especially, center their attack on Sen. Douglas because of his "secession" from the party. But Douglas was always ready with an impromptu reply for every assault. He was always dignified, clear, and aggressive- adroit in rejoinder and a master of convincing presentation and mild insinuation. The Northerners, too, would not welcome his overtures and assailed his Kansas-Nebraska bill unmercifully. The main purpose of these early speeches seems to have been to influence by their wide circulation, the voting upon the Lecompton constitution to be held on December 21st.

The plan that will be followed in the presentation of this subject does not permit of an examination of each speech delivered, but rather of the salient points discussed and these to be

1-Globe pI4.

2-Brown Globe p.573.-"Sir, the Sen.Illinois gives life,he gives vitality,he gives energy,he lends the aid of his mighty genius and his powerful will,to the opposition on this question. If ruin com upon the country,he,more than any other and all other men, will be to blame for it. If freedom shall be lost-if the Union shallfa if the rights of man shall perish on earth-if desolation shall spread her mantle over our glorious country-let no Senator ask who is the author of all this,lest expiring Liberty,with a death-rattle in her throat, shall answer to him as Nathan answered David 'Thou art the man.'" See alsoFitch.Globe p.137.

considered fully as special topics further on in the paper. In some cases where important argument or unique point of view is advanced by speakers, special consideration will be given, in the rapid resume of the discussion in the Senate. Before proceeding further it may be said that in these discussions there is no apparent unanimity or organization on the Republican side, probably because of the heterogeneous interests there represented. The field is not scientifically covered. There is overlapping and repetition. No caucus assignment is apparent. Even the speakers differ among themselves on questions of interpretation. The administration forces were much better organized in this respect.

The principal arguments advanced against admission with Lecompton were:

Ist.-The constitution did not represent the will of the people.

2nd.-Congress had no right to force a constitution upon an unwilling people.

3rd.- The undoubted evidence of gross frauds which invalidated all action were cited.

The key-word of the Opposition was "Fraud."

The friends of the measure replied:

Ist.-That according to the doctrine of non-intervention Congress was permitted to inquire into the validity and republican character only of the constitutions presented to it.

2nd.-That the question of fraud was therefore not pertinent for by the doctrine of popular sovereignty, the matter was placed beyond Congressional control.

3rd.-That if the constitution does not represent

the will of the people, it is their own fault.They have had ample opportunity to vote upon it.

The key-word of the administration was"In their own way." The speeches in the Senate represent the South presenting in every possible form the absolute and independent right of the people to frame their constitution as they pleased. One is reminded in this connection of the plan of Browning's "The Ring and the Book."

The main argument on the Kansas question centres around these foregoing reasons stated and restated in manifold form.As the debate progressed,however, new and special arguments pro and con were advanced by various speakers to bolster up their contentions. It will be well at this juncture to examine these special reasons:

It was urged that the acceptance of the Lecompton constitution would be a desertion of the principles of the Democratic party as enunciated in the Cincinnati platform.(1) Lecompton is objected to because it is in exact conformity with the Kansas-Nebraska bill principles and a part of the original program to fasten slavery upon Kansas.(2) And again because, even though, the laws authorizing it "may be fair", they have afforded the people no opportunity to withhold their approval from it.(3) Sen.Seward avows his hostility to Lecompton because he sees in the present status of the Kansas question,a crucial test for Northern interests."You have unwisely pushed the controversy so far",says he,"that only these broad concessions [Admission of Kansas,Minnesota and Oregon as free states and "the abandonment of all further attempts to extend slavery under the Federal Constitution"] will be now be accepted by the

1 - Douglas Globe-I37.

2 - Hale Ibid.3I5.

3 - Fessenden Ibid.6I0

interest of free labor and free states." And by Sen.Wade it was avowed that "the sanctity of the ballot-box,-the palladium of free government is at stake."

Against these subsidiary reasons,the champions of the measure urged:

Ist.The regularity of the proceedings connected with the framing of the constitution.The people have adopted "their own way" in the formation of their constitution and that way is srtictly regular and legal.

2nd. Admission as a matter of national expediency. The people of Kansas have no right to expect the whole country to be agitated constantly by their feuds.As a measure of national expediency, the speedy admission of the state with the first legal republican constitution offered should commend itself to the sound sense of the nation.

3rd. Admission averts a split in the Democratic party. The present Democratic party is the only national party. Slavery has demoralized all others and threatens now likewise to split the Democrats.In that event, we have a purely Northern and a purely Southern party, irreconcilable in interest and then, woe to the country.The admission of Kansas with Lecompton averts this calamity.

4th.Admission becomes a Southern test. Sen.Jefferson Davis significantly declares that the South is interested in Lecompton and Kansas,"Simply because of the war that is made against our institutions;simply because of the want of security which results from the action of our opponents in the northern states.----You have made it a political war.We are on the defen-

1-Globe 944. Sen.Seward probably urged this reason to offset the administration claim of Lecompton being a Southern test.

2-ibid.II24.

3-Green ibid.44.

4-Fitch ibid.I37.

5-Brown ibid.549.

sive. How far are you to push us?"(1)

5th. Admission localizes the agitation. In his Special Message of Feb.2,1858,President Buchanon favors the immediate admission of Kansas with Lecompton in order that the question of slavery in Kansas may be localized to the community which is concerned.(2)

6th. Admission relieves the General Government of the expenses of territorial administration. Territories are pecuniary burdens upon the Federal government and it is fight that they should be admitted as soon as advisable in order that they may assume their share of the common expenses.(3)

In the earlier part of the session, Sen.Douglas takes a leading part in the Kansas debate;but owing to sickness he is with held from participation in a portion of the later sessions. In his absence,Wilson,Stuart,and Crittenden assume an aggressive direction of the interests of the Opposition,while to Green,Hunter,Toomb and Pugh were largely committed the interests of the administration. Previous to the receipt of the Special Message of Feb.2nd.,the speakers had confined their remarks largely to the leading reasons enumerated above. It was not until after this that the validity of the vote of Jan.4th. and the question of the power of amendment were given much prominence.

There was little of impromptu effort in the Kansas debates;little of brilliant repartee. The speakers were chary of trusting themselves to an off-hand exposition of their cause and we have for the most part in these speeches,elaborate orations, polished and carefully prepared in advance, ornate with all the devices of rhetoric and tricks of style that capture the eye as

Globe 619.

Messagesp.478. To this Sen.Douglas replied:"You have legalized civil war instead of localizing the Kansas quarrel."-Glo.140.

Bright Ap. 163.

well as the ear. For it is very clear both by the diction and delivery that these efforts were for the most part addressed to a constituency, to the people of Kansas and to the nation at large. In those times of settled convictions, the Senators speaking on Kansas ,spoke not with the hope of influencing votes in the Senate,but of directing votes in the commonwealths at large. Hence it happens,that in their haste to be heard on the paramount issue there is much tedious repitition of classic argument; often dearth of original thinking;a lack of genuine rebuttal; and frequently a belated phillipic delivered after the occasion for it had seemed to have passed away. In the Kansas question, the firebrands of each section found convenient opportunity to discuss the question of slavery in the abstract and few of the speakers could resist the temptation of devoting a considerable portion of their addresses to that dangerous topic. It needs but a casual reading of these speeches to be impressed with the seriousness of the situation in I858. Each speaker possesses unalterable convictions. His argument is in the main extremely plausible. Accept his premises and his conclusions are inevitable. His statements are emphatic and the questions which he often propounds,he assumes to be unanswerable. If they are answered,he often ignores it and in the later addresses repeats the assertion unaltered.

The Kansas question in the 35th. Congress was understood to symbolize the irreconcilable conflict of sectional interest.For this reason it consumes over 900 pages of the Globe, and for this reason it attatched itself to every question, regardless of relevancy, wherever there was a conflict of sectional interest involved.As Sen. Davis well remarked:"The meanest thing---whichcan

arise among us incidentally, runs into this sectional agitation as though it were an epidemic, and gave its type to every disease".(1) It was quite natural that Kansas should materially obstruct all legislation.

In his speech of Jan.25th. Sen.Harlan (Rep.) of Iowa met the issue with unusual frankness. He examines impartially the main points in discussion and brings great legal acumen to bear in his analysis of them. It will be instructive for several purposes to dwell on his conclusions.(2) "If we admit the truth of the President' assumptions," he declares,"his conclusions are irresistible. For if a people are to be left perfectly free,they may act either through mass conventions or delegates.Now,if the people chose delegates to a convention without requiring submission, they are bound by the action of the delegates. The power of the convention in that instance was plenary and it is absurd to say that their action was void because of failure to submit their constitution." Was the Organic Act an enabling act? The opinion of Attorney-General Butler in the case of Arkansas Territory had been cited time and again to prove the necessity of an enabling act. But the opinion does not apply,says the Senator, because the Arkansas Territorial Act differed from the Kansas-Nebraska Act. He had examined the organic acts of all the territories and except in the Kansas-Nebraska act had found no law which did not directly or indirectly reserve to Congress the right to approve or disapprove all laws passed by the Territorial legislatures. Hence the opinion of Butler naturally followed. But by the Kansas-Nebraska Act, Congress surrendered this power of approval and bestowed the privilege of legislation upon all rightful subjects.The question then, is"Is

Globe -619.

ibid. 381 et.seq.

this a rightful subject of legislation?" Yes, answers the speaker because territorities are only transitory. The transition from a Territory to a State may be accomplished either by (I) revolution, or (2) by legal procedure. If legal procedure is preferable then this becomes a rightful subject of legislation. Did the people exercise this legal power? Did they authorize this constitution? Yes, say the Democrats. No, say the Republicans. This is the real point of divergence. The whole subject, then, hinges on the illegality of the early elections- on the original usurpation which "makes this a minority constitution and defeats the legal will of the people."

On Feb. 2nd. President Buchanon transmitted the Lecompton constitution to Congress together with his Special Message recommending the admission of Kansas. In this message the President enters upon a general discussion of Kansas; asserts that the Organic Act must be considered an enabling act; that the constitutional convention "was legally constituted and was invested with power to frame a constitution"; (1) that " if the people refuse to vote they have no right to complain that their rights have been violated"; (2) that the delegates had submitted " the paramount question" and if there was any dissatisfaction on the part of the constituents "the people always possess the power to change their constitution or their laws according to their own pleasure." (3) "Admission of Kansas will localize the question and will bring peace to the country. Meanwhile according to the decision of the Supreme Court, "Kansas is--- at this moment as much a slave state as Georgia or South Carolina." (4) The message immediately brought into the foreground two important questions: the validity of the vote of Jan. 4th. and the power of

1-Messages 476.

2-ibid 476.

3-ibid.477.

4 ibid.479.

amendment.

Sen. Trumbull immediately attacked the message and declared that "The real complaint in Kansas is that the people by virtue of frauds---have no opportunity to form their institutions in their own way."(1) And Sen. Toombs replied in his well known vein. It was at this juncture that Sen.Wilsn wery justly decried the defense of Lecompton because it was based on technicalities and specialities. "All the outrages in Kansas have been perpetrated under the color of law. Tyrrants always rule under color of law.Instead of asking what is the opinion of the people? What do they want?---we had Senators, Representatives, and now we have the President, quibbling on the technicalities and forms by which the substance is to be lost to the public."(2)

The fact that from a legal standpoint, the constitution was unassailable constituted the chief argument of the South.They took refuge in broad generalities. They examined critically the legal formalities that attended the execution of the constitution, and, ignoring entirely the charges of fraud on the basis of non-intervention,grounded their defense on little legalities. This ungenerous attitude alienated Crittenden and Bell from the Southern contingent.

Sen. Brown in his strong speech essays an explanation for the charges of fraud and aggression in Kansas. The Emigrant Aid Society,"a huge corporation,"had made the first invasion and Missouri retaliated.(3) To protect the bona fide settlers, the much maligned registration was instituted. He claims that there has been a "fair legal expression of the people upon the constitution".(4) and in a caustic peroration(5) charges to Douglas the responsibility

1- Globe 521.

2- ibid. 547.

3- See Wilson's reply ibid.575.

4- ibid. 549.

Vide f.n.page 10.

of any succeeding disasters.

Sen. Green, the resourceful Chairman of the Committee on Territories, offers an ingenious explanation for the presence of "Seward", "Buchanon", and other notables in the list of registered voters in Kansas. Secretary Stanton, said he,(1) had complained that in many instances the Republicans gave in fictitious names. There was no record of any pro-slavery man doing that. "Some base Republican may have done it to prejudice the election by this obvious appearance of fraud."

On Feb.8th. Sen. Fessenden delivered a powerful speech in which he confined himself closely to the general objections raised to Lecompton. The ground is very carefully covered; the present situation, eloquently presented, and his conclusions adduced with cogent clearness. Congress had not recognized the validity of the first legislature in Kansas by including its expenses in the general appropriation,he replies to Sen. Toombs.(2) If Congress is the proper tribunal to admit the state,why is it not, asks he,"the proper tribunal to inquire if the constitution has been properly adopted?"(3) The Kansas-Nebraska Act was a delusion;popular sovereignty, a pretense. It conferred no new rights which the people have not always possessed. They have always had the right to frame their constitutions as they wished.(4)

The Message and bills relating to the admission of Kansas were referred to the Committee on Territories. The reports of this Committee were returned Feb.I8th. together with a bill (sI6I) recommending the admission of the Territory under the Lecompton constitution.(5)

The Majority Report read by Sen.Green exhausts much of

Globe 577.

ibid. 613.

ibid. 614.

ibid. 616. He offers little public sympathy to Douglas of whom he inquires: "Does the honorable Senator think he can take the prey from the tiger and not himself be torn?"

"The thorns which I have reaped are of the tree
I planted; they have torn me and I bleed.
I should have known what fruit would spring from such a seed."
- ibid.617

Senate Reports 1st. Sess. 35th Cong. vol.I.-Report#82.

its space in a fierce denunciation of the free-state party and their methods.It evades the specific, and argues in the general. It bases its recommendation upon legalities, technicalities, regularities, amd the comprehensive doctrine of non-intervention. It is a lawyer's plea. It seeks to minimize the importance of the "disfranchised counties;" seeks to establish the discretioary power of the convention with regard to the question of admission; denies the validity of the vote of Jan.4th. and disallows the ordinance.The free-state party has had three opportunities to vote upon the constitution. In their present mood it would be futile to give them another chance.Congress does not approve or disapprove of a constitution. It has power only to inquire;(I) if it be legal,(2) if republican,(3) if the boundaries are admissible,(4) if the population is sufficient. Lecompton fills all these requirements and hence admission under it is recommended.(1)

The Minority Report was read by Sen.Douglas. It is an able paper and is confined to answering the President's Lecompton Message. Sen.Douglas was far too subtle for Buchanon, and in his hands the arguments of the Preside nt become hopelessly involved. The paper dwells upon two leading ideas:Ist. TheLecompton constitution to be authoratative must have been preceeded by an Enabling Act. He proves that the Organic Act cannot be considered as such. Then the constitution comes to Congress informally as a petition and the validity of the vote of Jan.4th. by which the constitution was overwhelmingly defeated, cannot be denied. 2nd.Referring to the President's suggestion that Congress amend the bill of admission to make obvious the right of the people of Kansas to alter their constitution at any time, Sen. Douglas denies the right of

1-Sen. Report. pp. 1-20.

congress to make such an amendment on the grounds of non-intervention.He further denies the legal right of a people to change their constitution other than according to the provisions of their constitution.It is a vain hope, a pretense, he declares.He puts pertinent questions to the President.Suppose Buchanon's doctrine becomes a judicial question,clearly the Supreme Court must decide against the doctrine. Or suppose an overwhelming majority of the people in the new state should adopt a new constitution and set up a state government under it in opposition to the one under Lecompton,which government would the President defend against"domestic violence"? (1)

Sen. Collamer presented the "Views of the Minority." It is more partisan in character than the report of Sen. Douglas.After a clear statement of the Free-State point of view, it devotes considerable space to justify the acts of that party. The reasons for the refusal of the Free-State party to vote are succinctly enumerated as follows: (2)

I- The supervision and returns of the election were in the power of men appointed by a legislature in whose election a large part of the people never participated and in whom for"sufficient reasons they had no confidence."

2-The Federal officers there,governor and secretary, had no control over these judges of election.

3-The virtual disfranchisement, either by accident or design of almost one-half of the counties,some of which were the most populous in the Territory.

4-The people had been promised" over and over again that the whole constitution would be submitted for ratifica-

Sen. Reports p. 52-76.

ibid. p.83.

tion. Hence there was a"natural fear and distrust at the deception. When the bare majority of the convention assembled in October,it was confronted with five problems which the report gives together with the solution:(1)

Ist. "The constitution with slavery must not be submitted to the people in any such way that a majority could reject it;and yet it must be submitted to them to redeem pledges and keep up appearances of fairness." Accordingly they framed a constitution establishing slavery in two forms:

A.- Perpetuating slavery in all slaves then in the Territory and prohibiting abolition.

B.-Allowing their unlimited introduction with their owners. Then they submitted the proposition in such a way that the first proposition was assured and only the second was voted on.

2nd.Gov. Walker having proved himself fair in matters of fraud, his official action must be avoided.-The convention provided that the election and returns were to be made by men appointed by Calhoun.

3rd."The use of the legal officers for the conducting of the elections and making the returns must be avoided, as they might be subjected to penalties if guilty of fraud, and possibly the new legislature might make appointment of honest men."

Putting the matter under Calhoun's control secured this.

4th."In order to supersede the legislature ,so recently elected by the people, and restore power to the usurpation it had overcome, it was necessary so to make the appointment of representatives under the proposed state government, as to overcome the actual free-state majority,now well known to exist,and

keep the supervision of the election out of their hands."

"The convention therefore based this apportionment of representatives in the state election to take place in Jan.1858 upon the same spurious,fraudulent, and fictitious votes so returned and rejected in the late territorial election."

5th."To so arrange it as to render any action of the new legislature unavailable, and to perpetuate the laws which the long continued usurpation had adopted."-"They provided that the laws then existing(not those existing when the state should be admitted) should remain in force until repealed by a state legislature under the constitution."

After these reports, the discussion of Kansas affairs was immediately resumed and it was in this period of the debate that the powerful speeches were delivered.

In his speech of March 3rd.Sen. Thompson enters into an elaborate argument to prove that the weight of precedent did not favor submission of a constitution of a state for ratification.(1) He asserts in emphatic language that a large number of people in Kansas"do not want a settlement of this question. That would bring peace not only to Kansas but to the Union; their vocation would be gone. It is not peace they seek or desire. It is agitation. Did they seek peace-did they honestly desire to change the constitution by peaceful and speedy means- they would be here,sir, advocating the admission of Kansas as a state,atthe earliest possible day, that they might then take its government into their own hands and make such a constitution and laws as would suit themselves."(2)

On March 4th. Sen. Hammond of South Carolina rendered himself conspicuous by advancing in a very eloquent speech some re-

1-Globe 945.

2-ibid. 947

markable doctirnes which ~~ha~~ furnished later ocassion for several oratorical flights by Northern speakers. He attempts to establish that if the convention was lawful it represented the will of the people so far as Congress was interested. "It is immaterial," he says,"whether it is the will of a majority of the people of Kansas ,now or not. The convention was or ought to have been elected by a majority of the people of Kansas. A convention elected in April may well frame a constitution that would not be agreeable to a majority of the epople of a new state, rapidly filling up, in the succeeding January; and if legislatures are to be allowed to put to a vote the acts of a convention, and have them beaten down by a subsequent influx of emigrants, there is no finality." (1) Sen.Hammond startled the North by declaring frankly that if Lecompton was a minority constitution, that would ~~not~~ be no objection to it; for "Constitutions are made for minorities." (2) He declared further that the real object of the Opposition was the destruction of the Democratic party, and in his closing remarks, he entered into an elaborate but exasperating exposition of Southern resources. HE offered an eloquent defense of slavery in which he took occasion to refer to "Northern hirelings and operatives" as"the mud-sills of society." (3)

Sen. Doolittle of Wisconsin followed with an exceedingly eloquent plea for the Union and the Constitution. (4) He makes one of the clearest presentation of the Northern view of the questions at issue offered at this session. (5)

Sen. Hamblin objects to the union of the Minnesota and Kansas bills, (6) while Sen. Sebastian favors this plan because it conforms to the precedents of admission. (7) Sen.Polk of Missouri explain at least to his own satisfaction, the "Missouri invasion," (8) and

1-Globe 960.

2-See Wade's answer ibid.1123. "Minorities should rule because you have not got a majority."

3-See Wilson's elaborate reply in the Appendix.

4-Globe 962 et seq.

5-ibid. 982 et seq.

6-ibid. 1028. "-when Congress voluntarily passes a bill ~~xxxxxx~~ prescribing the terms to a Ter. and saving that if she will adopt and follow them, she shall be admitted, it imposes an obligation upon us to do so in good faith.---We did so by Minn. If, therefore, she has substantially followed the line which we marked out for her, in good faith, in honor, and in honesty we are bound to admit her."

7-ibid.1029 In line with former precedents. Iowa and Florida were admitted together. Arkansas and Michigan by separate bills but in close succession.

8-ibid. 1063. See also Hunter on this topic ibid.1094.

with the other Senators of the South utters a violent denial of the right of Congress "to inquire by what method the people saw fit to adopt in making their constitution." The brilliant Senator Benjamin enters into a discussion of the abstract question of slavery and attempts to prove that the ancient right of slaveholding had become a recognized feature of our common law and that property in slaves like ordinary property must have the usual protection in the territories. He defends the Dred Scott opinion;eulogizes most eloquently the career and services of Taney; bitterly assails the Topeka constitution and its adherents and in closing recommends the speedy adoption of Lecompton.(2)

Sen .Chandler epitomizes his objections to Lecompton thus: "First,because the whole matter was conceived and executed in fraud; second, because this constitution does not emanate from the people of Kansas Territory or express their will; third, because it is one of a series of aggressions on the part of the slave-power,which if permitted to be consummated, must end in the subversion of the Constitution and the Union; and fourth,because it strikes a death blow at state sovereignty and popular rights."(3)

Sen.Hunter in his speech of March 12th.,enumerates two classes of objectors to Lecompton:

Ist.-Those who declare that the first legislature was bogus;hence the authorization of the convention and the action of that convention are invalid.

2nd.- Those who declare the constitution invalid because of the absence of an enabling act and further, because the whole constitution was not submitted to the people.

To the first class of objectors, he answers that the first legis-

1-Globe I064.

2-ibid. I065 et seq.

3-ibid. I087.

lature was the de facto government and received the assent of the people of Kansas because they lived under its laws. If not a government de jure, it was indisputably a government de facto; "and according to all the prescriptions of society, accordingly to all the maxims of law, its action is obliged to be recognized as valid, for there was no government in that Territory to dispute its authority." Therefore the action throughout was was valid and abstention from voting is binding nevertheless.(1)

The second objection is met with a denial of the legal necessity of submitting the whole constitution for popular approval. Sen. Hunter concludes that this prolonged agitation must mean either a desire to keep the question open for political purposes or an unwillingness to admit any state which tolerates slavery in its constitution.

On the same day (March 12th.), Sen. "Ben." Wade, one of the Northern war-horses, uttered his powerful protest against Lecompton. He insists that the convention that framed the Topeka constitution was not revolutionary. Everybody had been invited to come up and see if some method could not be agreed upon for framing a state constitution. This constitution represented an overwhelming majority and was ratified by a vote of the people not less than twice. It was not in defiance of law but from the first assumed the form of a petition to Congress. The Topeka constituion is just as legal as Lecompton because both being informal and unauthorized must be considered mere petitions to Congress. It is the informal character of Lecompton that relieves the Free-State party of the binding obligation of voting upon it.(2) In scathing terms, he arraigns the South for its reliance upon mere techni-

1-Globe 1094.

2-ibid.. 1121.

calities. "I know that on the other side of this chamber, for more than two years, you have invoked nothing else but the mere technicalities of law to cover your utter nakedness of principle. You have sought to steal the liberties of a whole people and screen yourselves behind the technicalities of what you call law; but which, on closer investigation turns out to be a bare usurpation without color of authority."(1) The South complains because the Free-State party refused to vote. Why should it have voted? he inquires cuttingly. "Cincinnati Directories and candle box returns have been infinitely more potent than the real votes of the people of of the Territory. What good would it do them to vote? You had already taught them that there was a purpose to be accomplished, and if votes would not answer, Cincinnati Directories, forged returns anything would be resorted to; the thing would move on majority or no majority."(2) The solution of the Kansas problem, he avers, is patent. Contention is kept up solely to fix slavery upon the new commonwealth. Give the people a fair chance and peace will ensue; follow the other course of external interference and civil war follows.(3)

Sen. Mason on March 15th. defined the issue. "For the first time in 40 years, it is proclaimed on this floor, you shall have no more slave states. That is the direct issue before us in this Kansas question notwithstanding the mist which some have endeavored to throw around it."(4) Sen. Clark answered the complaint of the South that if slavery is excluded from Kansas, slave-holders cannot go there with their slaves, by replying that if slaves went there, <u>free</u> labor must stay away. "You have got to exclude one or the other in toto."(5)

1-Globe II2I.

2-ibid. II22.

3-ibid. II24.

4-Appendix 82.

5-ibid. I08.

Sen. Cameron declares this is not a question of admission, for that implies the concurrence of the party to be admitted. Sen. Mallory concedes the possibility of illegal voting but denies that the acts of the bona fide voters in these elections are to be affected by border-ruffianism any more than the illegal acts of mobs in cities tend " to affect legal action of your-proper authorities."(2) With eloquent phrases he traces out the trend of events- Northern expansion and Southern contraction. The only possible protection for the South in the Union is a strict adhesion to the Constitution-hence the importance of the principle involved in this contest.

Sen. Pugh of Ohio,a staunch supporter of the administration, who was instructed by the state legislarure to vote against Lecompton, entered into an elaborate analysis of the problem- a speech which combines a strange mixture of logic and specious reasoning. Assuming the Minnesota constitution to be a Northern paragon, he seeks to bring out the virtues of the Lecompton constitution by contrasting it with that of Minnesota. He finds parallels in the irregularities(3) and concludes that this class of objections is immaterial.(4)

On March 17th.,Sen. Crittenden of Kentucky delivered one of the best speeches of the seesion in opposition to Lecompton. Sen. Crittenden was a conservative,Union-loving, Native American and therefore politically independent. By reason of profound conviction, he was prompted to take issue with his section and his defection and that of Sen. Bell were distinct losses to the South and correspondingly great gains for the Opposition. Clear, calm impartial, he makes a patriotic plea for justice and for the pres-

1-Globe II35.

2-ibid. II36.

3-See ibid. II4I. Minn. constituion was formed by the election of an unauthorized number of delegates which met in two conventions. Minn. by three sections (I6,I7,I8) provides for the ratification of the constitution and election of officers not yet in existence, at the same polls, same time and by the same ballot "No voter shall vote for against this const. on a separate ballot from that cast by him for officers to be elected at said election under this const."

4-See ibid. II45. for a lawyer's plea for the validity of the first legislature.

ervation of the Union. He censures both sides for their intolerant sentiment. Sincerity and anxious earnestness pervade his speech and his lucid discussion of the main points in contention compels conviction. Himself a chivalrous lover of fair play, he lays much stress upon the frauds committed in Kansas and bitterly upbraids the South for its ungenerous reliance upon regularity of form. There is no doubt of the regularity of form, he says,- election, convention,-all were regular enough. Even the people of Kansas admit that but they urge nullity for fraud. And in the face of this monstrous protest, Sen. Crittenden insists that Congress does have a right to inquire into the facts. "Do not suppose that I would disparage all these conclusions and presumptions from a formal regular manner of doing business. In many cases, and to many of the transactions of society, espacially to your courts of justice, they are necessary, and they subserve the purposes of justice. They were not made to sacrifice justice but to uphold it, and maintain it and protect it as an armor. That is the proper business of forms- not to crush down justice, but to promote it".(1) He deprecates the immoderate attempts of the South to secure Kansas. The admission of the Territory under Lecompton will be a barren victory for the South. Kansas can never be a slave state.(2) He submits, therefore, that it would be better to defer the question for a little while rather than force a constitution upon an unwilling people; and in closing pleads for rational action.

Sen. Toombs, in a very forcible speech, denies most positively the right of Congress to require a state constitution to conform to its ideas. He concedes that there may have been frauds but contends that it is not clear who perpetrated them nor

-Globe II57. Sen. Toombs reply- Appendix I26.- Majority rule is based on the idea of more strength and wisdom in large numbers. In a way it is the doctrine of force. Majorities must rule by by established regulation i.e. by technicalities. "It is the sole protection of liberty; it is the sole bulwark against anarchy; it is the sole barrier against determining all questions by brute force. Strike out what the Senator [Crittenden] calls 'your little legalities and regularities' and where is the security of the weak against the strong?----where is the difference between liberty and license?"

-Globe II57.

are they of sufficient magnitude to invalidate the election; besides none of the allegations of fraud affect the vote directly connected with the authorization of the constitutional convention.(1) There are three clear legal rights by which Kansas can claim admission: Ist. Under the Treaty with France of I803; 2nd. "She comes here under your general declaration in the statement of I850"; 3rd. By the express provisions of the Kansas-Nebraska Act of I854 wherein her legislature was given control over all rightful subjects of legislation.(2)

A Native American like Sen. Crittenden, though unlike him, specifically instructed by the Legislature of Tennessee to to vote for Lecompton, Sen. Bell chose to disregard those instructions and in a magnificent speech on March I8th.(3), began his vigorous fight on that state constitution. Sen. Bell, like Sen. Crittenden, was a man of unquestioned political integrity,-a genuine patriot deeply alarmed for the safety of the Union. Profoundly convinced of the injustice of the administration plans for Kansas,he stood for conscience in defiance of instructions and charges of"desertion",and opposed Lecompton with all the sturdy strength of his preeminent powers. His thorough study of the situation and his impartial presentation of the salient facts therein, make his speech especially valuable for the historical student interested in this period. Sen. Bell begins by cursorily reviewing the notorious frauds and their results. Then entering into the legal phase of the Kansas controversy, he proves(by argument to be presented later under other headings) the undoubted validity of the vote of Jan. 4th. and from this the natural conclusion that there is not ~~at~~ before Congress an application for admission with the assent of

1-Appendix I27-8.

2-ibid. I27.

3-ibid. I32 et seq.

the people of Kansas. To the constitutional questions, he applies great legal learning and common sense. He is struck with the significant fact that the prominent pro-slavery leaders have long ago realized that Kansas could never become a slve state and that the controversy was kept open by "political adventurers, chiefly office-holders, or office-seekers, who have not the slightest interest in the question beyond the expectation of some personal benefits"(1). His suspicions, too, are very properly aroused by the fact that the supporters of Lecompton in both Houses had persistently voted down every proposal to investigate the frauds in Kansas and from this he naturally assumes that"this course would not have been perdisted in unless it was understood that the facts would turn out to be as they have been charged"(2). He deprecates the disunion talk and censures both sides for their radical agitation. In this connection the query naturally arises, if there was not a special purpose in the harsh censure of Bell and Crittenden for Seward and the North? Such a castigation made their powerful opposition more independent to the nation and more palatable to the South.

On March 20th. Sen. Foote whose style of oratory was very similar to that of Sen. Wade's, delivered his very vigorous speech against Lecompton. Sen. Foote belonged to that school of blunt, frank speakers who were strangers to circumlocution. In referring to Lecompton, he says:"It was literally 'conceived in sin and brought forth in iniquity'. And Congress is invoked to legitimate this unnatural bantling and to force its recognition upon a people who disown it-as the offspring of violence and dishonor"(3). He recounts vividly the story of the original fraud, and in his

Appendix I37.

ibid. I37. For Resolutions for Information see Appendix.

ibid. I53 et seq.

defense of the Free-State "rebels" occurs one of the longest periods of sustained eloquence to be found in any of the speeches of the session.(1) In unequivocal language he charges President Buchanon with duplicity and arraigns him most severely for recreancy to his pledges.(2)

Sen. Wilson, the master of diatribe, offered on the same day an answer to Sen. Hammond's speech of March 4th. It is a brilliant, eloquent vindication of the North,-a complete and satisfactory reply, but too strongly partisan and sarcastic to be useful. It is a model for masterful arrangement of data, and effective employment of contrast. This truly remarkable speech is a worthy precedent for the later Ingalls whose caustic style it greatly resembles.(3)

Sen. Bayard of Maryland enumerates four possible grounds of rational opposition to the admission of Kansas:

Ist. Want of sufficient population.(Waived by both sides.)

2nd. Constitution not republican. (Denied.)

3rd. Not the legal will of the people. (Denied.)

4th. Will admission conduce to the best interests of the Union? (Yes)(4)

After several weeks of enforced absence from the Senate, Sen. Douglas returned on March 22nd. to take a parting shot at Lecompton and the administration.(5) He enters into the merits of the constitutional questions at issue, and with his usual lucidity adduces convincing conclusions against Lecompton. Passing these by, he puts the question fairly to the South; If the situation were reversed, and if it was a free-state minority imposing their constitution on a slave-state majority, would they indifferently consent? This constitution, he emphatically affirms, does not repres-

1-Appendix I55. "Rebels, are they? So then were the fathers and their compatriots of the American Revolution- yea, much more rebels that these; for they actually took up arms against the recognized government of the mother country; whilst these people have as yet made no practical resistance to the spurious government to which they owe no allegiance, and which grinds them to the dust.--- Rebels, are they? If they are rebels, and if this is rebellion, then commend me, henceforth and evermore, to such rebels and to such rebellion. To just such rebellion, in principleare we indebted for our national independence. To just such rebellion are we indebted for the privilege of sitting here to-day in this council chamber of the nation. To just such rebellion is every American citizen indebted for the birthright of his freedom. To just such rebellion are we all, as American freemen, indebted for all that we, and all that we are, and all that wecan hope to be on earth, which is worth living foror worth dying for. Sir, the active, operative principle of just such rebellion has been the origin and laid the foundation, of all free governments. The living principle of just such rebellion has been in times past, as it shall be in times to come, the redemption of downtrodden humanity from the bondage of oppression and from the tread of a deaf and dumb and blind despotism. It is the spirit which animates just sucha rebellion which is to wake up the nations of the Old World from the stupor, and to dispel the thick darkness,which have hung upon them through a long polar night of despotism. It is this spirit, though yet silent and unseen it may be, before whose resistless power the rotten and crumbling dynasties of the earth, now grim and hoary with the age and with the crimes of departed generations are yet to fall and no more to plague the nations of men. It is this spirit which is to arouse the slumbering and oppressed millions of the earth to a new and a higher life- to the assertion and realization of God's own gift to man- his inalienable right to freedom, independence, andself-government. Sir, I commend this spirit in the people of Kansas. call them rebels, if you please; persecute them; oppress them as you may; yea,annihilate them if you can; but you will never permanently subdue them. By the arbitrary exercise of your power, you may make them all martyrs to freedom; but, as God liveth, no power on earth, shall be able to make one man of them the slave of your despotism. If the voice of my counsels could reach them in their far-off western homes, where the sun goes down in lurid light upon their humble dwellings, it should be, 'stand firm'; 'make no dishonorable concessions to usurpation and tyranny'; 'demand justice and nothing less than justice'; 'If that be denied you, if submission or death must come at last'; then, 'better die all freemen than live all slaves'."

2-ibid. I57.

3-ibid. I67 et seq. For extract see Appendix.

4-ibid. I8I.

5-ibid. I95 et seq.

ent the will of the people and if it was not for the slave clause there would be no objection to returning it. He vindicates his position and his Democracy;charges President Buchanon with bad faith; denounces in glowing terms his present policy of political proscription; and defends the doctrine of state control of slavery. Sen. Toombs in his spirited impromptu reply discloses rare ability as an off-hand speaker. Confining his remarks at the outset primarily to an attack upon Sen. Douglas for his defection, Sen. Toombs gradually emerges into the arena of general discussion and in forcible language denies the usual allegations of the North.

On March 23rd. Sen. Green summed up the evidence for the administration and preparatory to a vote upon the bill, the question of the organic nature of an ordinance was raised.(1) Sen. Pugh's amendment for the establishemnt of Federal judicial district was passed. Then Sen. Crittenden arose to offer his famous amendment. This measure provided for the submission of Lecompton to the people of Kansas. If ratified by them, the state was to be admitted by Presidential proclamation; if rejected, the people were authorized to prepare a new constitution under which they were likewise to be admitted by proclamation. It was an eminently fair proposition, wisely framed to meet the emergency. Only the last portion of the bill could give grounds for logical opposition. The amendment was defeated 34-24.(2) After some minor alterations in the phrasing of various provisions, the whole bill was passed 33-25.(3)

On April 2nd. the Crittenden-Montgomery amendment of the House was taken up for consideration by the Senate. Sen Bigler, a mouth-piece of the administration, was the first to sound his objections to the House substitute. For the present the relative at-

/-Discussed later on as a separate topic.

2-Globe I260.

3-ibid. I263. See Appendix for analysis of the vote.

titudes of the sections regarding admission were reversed, and in view of the English Bill proposed later and the reasons advanced at that time in its behalf , these objections become very instructive. The fight on the Crittenden-Montgomery amendment discloses a dogged determination on the part of the South to admit Kansas with slavery regardless of consequences.

Sen. Bigler's objections to the House amendment were:(11)

Ist. Form of submission.- "For the Constitution" or "Against the Constitution" means "slave state" or "no state at all."Those who desire it to be a free state would have no fair opportunity of carrying out their will". [Very true, were it not for the permission to form another constitution in conformance with their wishes- an alternative omitted in the English Bill.] Besides this virtual disfranchisement, the Senator further laments that the question of slavery is not submitted- an action rendered unnecessary by the terms of the bill.

2nd."Insomuch as it is greatly disputed whether the Lecompton constitution was fairly made". [Preamble of the amendment.] This implies that some obligation rests upon Congress to know that the constitution is fairly made. We have no such powers of investigation. This objection, it will be recognized is consistent with the Southern attitude from the first.

3rd. The provision that under the new constitution to be framed in the event Lecompton is rejected and the state is to be admitted by proclamation.- What guarantees are there, inquires the Senator,that the new government will be fairly made? What protection against fraud? If it is the duty of Congress to investigate, how is it possible under this provision? [Perhaps the only tenable

/- Globe I44I et seq.

objection to be urged against the C-M amendment is in this provision- and this is not formidable.]

4th. Under this arrangement the President is empowered to exercise Congressional functions. States with constitutions actually considered by Congress may very properly be admitted by Presidential proclamation. But in the case of new constitutions, such power is not authorized. Even the President is given no discretion and there are no assurances of the republican character of the constitution. It might be said by way of explanation that this provision in the amendment was prompted by the desire of the authors to give a finality to the Kansas question by preventing its recurrence in Congress again. The present exigency seemed to demand the permanent withdrawal of this dangerous topic from the halls of Congress. The provision relies upon the conservatism of the American people, and the idea that a people whose only experience in matters political had been under a republican regime, could or would draft any form of government that was not of a republican character, is too ridiculous for serious consideration. It is mere refuge in a technicality.

Sen. Douglas contends that the amendment is genuine popular sovereignty and its adoption, by removing the question from Congress means rest and peace.(1) Sen. Pugh averred that the bill was unfair and could not give peace.(2) The whole purpose of the amendment according to his interpretation, was to defeat the ratification of the constitution. Then why not reject it at once? Kansas has already had three constitutions. If they fail in this Lecompton, the most regular one passed,"I am against any more constitutions from Kansas. Let her stay until she gets the proper popula-

1- Globe I442.

2- ibid. I444.

tion.----I did not believe [at the time of the Toombs bill] it was a good precedent to bring a state into the Union with so small a population;and I say now ,if this Lecompton constitution which is the only regular and legal one, is to be rejected in every shape and form, let us dismiss the whole subject out of Congress and let Kansas wait until she gets a population sufficient according to tha ration prescribed for one Representative."(1)

By March 24th. the legislatures of eleven states had presented to their representatives in Congress resolutions of instruction for their votes upon the Kansas question.(2) Texas had virtually declared for secession if Lecompton failed and Maine sanctioned and pledged her support for forcible resistance if Lecompton succeeded. These resolutions are indicative of the pitch of public feeling in the Kansaa agitation.(3)

1-Globe I445. This will be recognized as a precedent for the English Bill.

2-See Appendix.

3-The principal speeches for the North were made by Senators:

Doolittle	March 8th.	Globe	98I-987.
Wade	" I2th.	"	IIII-III8.
Crittenden	" I7th.	"	II53-II59.
Bell	" I8th.	App.	I32-I4I.
Foote	20th 20th.	"	I53-I58.
Stuart	" 22nd.	"	I74-I8I.
Douglas	" 22nd.	"	I94-20I.

For the South:-

Hunter	" I2th.	Globe	I093-I098.
Mason	" I5th.	App.	75-82.
Bigler	" I5th.	"	II2-II6.
Pugh	" I6th.	Globe	II40-II45.
Toombs	" I8th.	App.	I24-I30.
Bayard	" 22nd.	"	I8I-I9I.
Green	" 23rd.	"	204-2I2.

PART II.

In this division of the study, the leading questions discussed in the debate on Lecompton will be considered in their logical relations-a method of presentation which will serve to bring out more clearly the lines of attack and defense of this administration measure. The material employed in this portion of the study is selected from such speeches as served the needs- and that without reference to the time of their delivery. This could be safely done by reason of the fact that until the consideration of the English Bill, there was slight change,if any, in the plan of Southern defense.It is understood, of course, that the material embodied in these arguments to follow represents the bulk of the subject-matter of the speeches on Kansas.

These constitutional questions carefully collated and corrected with reference to subsequent practice, would furnish the ground work for a comprehensive study in American Political Science.

I. The Validity of the Vote of January 4th. 1858.

Purpose of an Enabling Act.

As the question of the necessity of an enabling act occupied such a prominent part in the discussions, it will be well at the outset to ascertain the purpose of an enabling act before examining its effect upon an application for admission to statehood.

Sen. Stuart submits that,(1) "The character of an enabling act is simply to authorize the people of a Territory to form a constitution and state government for the purpose of being admitted into the Union and for no other purpose. It is useful and safe--- because it enables Congress to define the boundaries of the new

Globe I58.

state, to require that the constitution when formed shall be submitted to the people, and generally to exercise a proper control over the whole subject". The fact that the powers of Congress in this respect are plenary would render the necessity of submission merely a personal assumption. Again he says that the passage of an enabling act simply means that the convention once assembled first votes whether it is expedient to form a constitution,-an interpretation[1] apparently addressed primarily to the necessities of the afgument of the Opposition. Sen. Hamblin said[2] that the only importance of an enabling act was that when a Territory complied with the terms prescribed by Congress, Congress was obliged in good faith to admit it. Or as Sen.Green puts it:"The only purpose of an enabling act to an organized territory ought simply to be a law of assent"[3].

An enabling act,then, serves simply to give authoritative character to any constitution framed under its sanction.

Power of Admission.

"The power of Congress is 'to admit' a state into the Union not to coerce it.-----It is mere consent on our part nothing more. The state proposes admission and Congress gives its consent"[4]. Unless the people request it you have no authority to say yes.Hence Congress must be sure that the people wish admission. Kansas does not so wish. Sen. Stuart attempts to make much of this interpretation; and although apparently sound when urged in this form, it appears after all to be a shrewd technical plea, the importance of which is apparent only when it is considered in connection with the validity of the vote of Jan.4th.

The South concedes that "Constitutions are presented; [that] states make application for admission",but denies the import in-

4-Globe I58.

5-ibid. I028

6-ibid. 43.

7-ibid.I58. andApp.I77. Stuart.

ference that Congress is forcing a constitution upon Kansas because,"In each case the question is, is this a state?---If a state, is the constitution republican? These questions being answered,we neither approve or disapprove the constitution;we neither condemn, nor accept, nor adopt; we do not impose a constitution upon that people in any case whatever".(1)

The coincidence of argument in regard to the necessity of application reveals the real question to be: "Can Lecompton be considered as authoritative application for statehood?" Upon this question, the South makes two distinct assumptions; first, that Lecompton is an application authorized by the people; and secondly, the limited power of Congress to inquire into the character of such an application.

Sen. Clark's interpretation of the power of admission relates itself to this latter assumption.(2) By this power he justifies the right of Congress to examine thoroughly the state constitution presented- the denial of which right later on becomes the ground work of Southern defense. The Federal Constitution authorizes that"new states may be admitted with three limitations: (I) not to erect a new state within an old state; (2) nor a state out of two states without mutual consent of the legislatures; (3)that the United States shall guarantee a republican constitution". Sen. Clark argues that these limitations are final and exhaustive and do not prevent the United States from inquiring into the character of the institutions of the new state. He insists with reason upon the Congressional right to inquire further than if the constitution be republican in form.(3) His reasonable conclusions are justified by the subsequent practices of Congress and his style of In-

1-Green Globe 904.

2-App. 86-7.

3-ibid. 87. "I do not believe that Congress is tied up in the Constitution in any such way. I beleive we have the pwoer if Brigham Young comes here with a constitution tolerating polygamy to say to Brigham Young, you cannot come into this family with your wives. I believe that if any state should come here tolerating murder, robbery, or larceny, we have a right to say [to that state] that we shall not admit a state allowing those crimes into this Union".

Recall in this connection the prohibition of polygamy for Utah and also the provision for prohibition in the Senate Bill of the late Congress (1905) to admit Oklahoma.

ductive reasoning ought to have appealed to the South. But much was not made of the argument, however by the North and it was entirely ignored by the South.

Is an Enabling Act Necessary?

The question raised in this connection was not whether the previous passage of an enabling act was a sine qua non to admission- an unwarrantable assumption-but whether in the absence of such an authorization a constitution possessed more authority than any ordinary petition. Previous to the vote of January 4th. the question seems to have been raised as a mere detail of the general objection to Lecompton. Later, however, it became a strategic point of Northern attack, for if the Opposition could prove the necessity of an enabling act to give a constitution an authoritative character and could then show that the Organic Act was not an enabling act, they then had a premise from which important conclusions must follow: First, the validity of the vote of Jan. 4th. which rejected Lecompton would be assured, since the petition character of the constitution placed it clearly under local legislative control. There was therefore no petition for admission before Congress. Secondly, "If the Territorial Legislature had no [specific] authority to call a convention then it was perfectly optional with the people to comply with the act or not"(1),-obedience in such a case being not obligatory. From which it is clearly inferred that abstention from voting upon a constitution authorized by an enabling act binds the non-participant to the verdict of the ballot-box. Thirdly, the Topeka constitution is just as legal as Lecompton since both are to be considered as mere petitions.

At first the South met this argument by conceding the ex-

1-Wade, Globe II2I

pediency but not the nesessity of an enabling act and bolstered up their defense by citations of precedent. Later on however, when this point grew in importance, the champions of Lecompton shifted their position somewhat and massed their defenses upon the proposition that the Organic Act was an enabling act, evading the proximate and thus anticipating the ultimate.

Was the Organic Act an Enabling Act?

Those who affirmed the question based their reason upon the implication of the act and the clear intent of Congress at the time of its passage.

President Buchanon declared that the Organic Act recognized the right of the people to form a constitution without any special enabling act.(4) "For Congress 'to leave the people of the Territory perfectly free' in framing their constitution 'to form and regulate their domestic institutions in their own way subject only to the Constitution of the United States', and then to say that they shall not be permitted to proceed and frame a constitution in their own way without an express authority from Congress, appears to be almost a contradiction in terms". This statement hardly meets the Northern contention. The opponents of Lecompton did not deny the petition right of the people of Kansas "to be exercised in their own way"; but they declared that the presumption of authority accredited to Lecompton by its champions was entirely unwarranted since the source of that authority was lacking.(2) Sen. Bright stated(3) that the Kansas-Nebraska act meant two things: (I) non-intervention, and(2) "acquiescence in the action of the legally constituted territorial governing authority, subject to the proof the Federal Constitution", i.e. was in effect an enabling act. And Sen. Bayard,(4) after examining the provisions of the Organic Act

1-Special Message Feb.2nd..1858.- Messages &c. p.474.

2-Doolittle Globe 962-"---Mr. Buchanon himself declared on this floor, when Michigan applied for admission, that if a territorial Legislature without an enabling act first passed by Congress should attempt to call a convention and form a state constitution to supersede the territorial government, it was a 'down right usurpation on the part of the Territorial Legislature'".

3-App. 163.

4-ibid. 181.

and the discussions upon it at the time of its passage, decides that the implication is clear. Sen. Green[1] declared that the Kas-as-Nebraska Act provided for a temporary government. Hence its real purpose was to enable them to prepare for admission and therfore it is all that an enabling act could possibly do,-a species of reasoning he would have been loathe to accept from his political adversaries. The real difficulty of interpretation lies in the ambiguous meaning of "rightful subjects of legislation".[2]

The North denied the enabling feature of the Organic Act: first, because such an interpretation was not warranted by any provision of the act itself; and secondly, because an Enabling Act for Kansas had actually passed the Senate at a previous session. Sen. Douglas, the author of the Kansas-Nebraska bill, says[3] that the people of Kansas waer not authorized at their own pleasure, "to resolve themseives into a sovereign power and to abrogate and annul the organic act and territorial government established by Congress----without the consent of Congress",-a condition, however, which does not preclude the privilege of petition universally conceded.[4]

The conclusive answer, however, as to the intent of Congress and the meaning of the bill as understood by the authors, is found in the fact that in 1856, President Pierce sent a special message to Congress recommending the passage of an enabling act for Kansas and such a bill passed a Democratic Senate on July 2nd. 1856, withholding the power to form a constitution until the population of Kansas equalled 93420.

Sen. Doolittle[5] advances the opinion that the powers of a territorial legislature are derived entirely from the organic

1-App. 205.

2-See Harlan Globe 382, in this connection. Fessenden ibid. 612- "This is not a proper subject of legislation unless the authority is conferred upon them [legislature] to make it binding".

3-Minority Report- Senate Reports p. 6xx 53.

4-Collamer- Views of the Minority- Sen. Repts. p. 81. cites the cases of Tennessee, Michigan, Florida, and Arkansas as examples of states which have exercised the right of petition for admission.

5-Globe 962.

act and every power exercised by the legislature must be found in the organic act or it cannot be found at all. Now the Kansas-Nebraska Act makes no provision for the calling of a constitutional convention and the Senator specifies three reasons against the argument of an enabling act being found in the Organci Act by interpretation:

Ist. The Organic Act contains no express grant of power to the Legislature to call a convention. 2nd. No such power can be implied from the circumstances under which the act was passed of from the condition of the Territory at the time of the passage of the Act, for there were not over 500 white inhabitants in both Kansas and Nebraska then. 3rd. "If you claim that this language contains an enabling clause, it is utterly void for uncertainty. It mentions no time, prescribes no mode, in which the initiative, the incipient step may be taken towards the formation of a constitution".(1)

The weight of evidence seems to incline toward the contention of the North that the Organic Act was not an Enabling Act.

Was the Vote of January 4th. Valid?

The Free-State legislature had submitted the whole constitution to a vote to be held on Jan.4th.1858(2) and at that election Lecompton had been defeated by overwhelming majority. The friends of the constitution denied emphatically the legal right of the legislature to authorize such a vote and ignored its results. Nearly every speaker on both sides expressed an opinion upon this question the importance of which has already been alluded to.

President Buchanon declared(3) against the validity of the vote because the election was held after the Territory had been

1-See Trumbull Globe II63. also Bell App.I34.

2-For reasons for this vote of Jan. 4th. see Douglas Minority REp't. in Sen. REp'ts. p. 58. For results ibid. p. 59.

3-Special Message.- Messages &c. 478.

prepared for admission as a sovereign state and "when no authority existed in the Territorial Legislature which could possibly destroy its existence or change its character". This objection based upon the absence of specific authority vested in the legislature when applied to his premise renders it clearly invalid. For to begin with, there was no specific power in the legislature to authorize a constitution.(1) Then, too, by what authority had Kansas been "prepared for admission"? asks Sen. Douglas.(2) Certainly not by Congress, for Congress in 1856 had withheld its consent. He then quotes the opinion of Attorney-General Butler in the case of Arkansas Territory to prove that a territory has absolutely no right to form a constitution without the previous permission of Congress. Hence it follows that Lecompton without this authority in forming the constitution "could not impair, restrain, or diminish the authority of the territorial legislature"; and hence Lecompton should be treated like any other petition to Congress. The opinion cited above, says Sen. Douglas, does not preclude the right of petition. In fact Arkansas was admitted under it. But under the petition right the power is "plenary and unlimited". There is no legal objection to the people forming a constitution in a legal manner; "provided always, that such measures be commenced and prosecuted in a peaceable manner, in strict subordination to the existing territorial government and in entire subserviency to the power of Congress to adopt, reject, or disregard them at their pleasure".(3) such a constitution must also, "MEET THE SENSE OF THE PEOPLE TO BE AFFECTED BY IT".(4) Therefore if this principle be sound the territorial legislature had a right to submit the constitution, (1) to determine the will of the people upon it; and (2) because the conven-

1-See Doolittle supra.

2-Minority Report. Senate Reports p.61.

3-Quoted from the opinion of Atty.-Gen. Butler. The emphasis belongs to Douglas.

4-ibid.

tion being a creature of the territorial legislature[1] was entirely under its control. The defense of those who denied the validity of the vote, lay in the assertion that the convention represented the people directly in their sovereign capacity; that it was a co-ordinate body, entirely beyond the sphere of legislative control, and its actions were, therefore unassailable.

This opinion was first advanced in the Majority Report[2] in which it was declared that the work of the convention authorized by the people directly was final until the people authorized its change.[3] Sen. Hunter[4] views the vote of Jan. 4th. as an unwarranted encroachment upon the powers of a convention independent within its own sphere. To Sen. Sebastian,[5] the act was a usurpation. Sen. Pugh[6] declares the vote to be "unauthorized, factious, and void". The convention had derived no original authority from the legislature; it had received its full authority from the people. The function of the legislature in this matter was simply to prescribe the time, place, and manner of election; which formxal power it had expanded into an assumed right of supervision entirely without legal foundation. Sen. Toombs[7] in emphasizing the independence of the convention, declared that "This Territorial Legislature had no more power over it [Lecompton] than it had over the constitution of Kentucky. It was a complete act of the people in their sovereign capacity and was beyond the reach of the Territorial Legislature.--- It is not a legislative power to control the people in forming a constitution".[8] Perhaps the clearest exposition of the Southern side of this question was given by Sen. Bayard[9] in his speech of March 22nd. Said he, the legislature had no control over the convention, "because wherever the people have authorized the assembling of a convention to form a constitution, its power is paramount over the

1-Conceded by Toombs and others.

2-Sen. Repts. p.I5.

3-See also ibid. p. I7.

4-Globe I095.

5-ibid. I033.

6-ibid. II4I.

7-App. I28.

8-See also Toombs App. 204.

9-App. I88.

existing territorial authority. Take the case of the legislature of any of your states", he continues, after the legislature, authorized by the people pass a law calling a convention, specifying the time, place, et cetera, the convention once assembled, since "it represents the entire sovereignty of the state", is paramount to legislative authority and no subsequent legislature has power to interfere.(1) In all these speeches it will be seen that the inherent authoritative character of Lecompton is assumed by the South. It is further evident, that even though the North conceded the theory of the convention "representing the sovereignty of the people", it could not admit, in view of the well-known conditions in Kansas, that the people of Kansas had vested such plenary powers in this convention.

The chief argument of the North in defense of the vote lay in the absence of an enabling provision in the Organic Act which would make Lecompton more than a formal petition. The control of a legislature over a constitutional convention, Sen. Doolittle(2) explains, is the power "to prescribe for the authentication of the proceedings of the convention; for the mode of calling it; for the mode of ceritfying it,----[the] power to give authenticity to the act of the convention; the mode of proving it; the mode in which the will of the people is to be expressed. The authority which one legislature could exercise , another legislature could exercise at any time before the constitution, framed by the convention--- takes effect as a binding instrument". Sen. Wade(3) in vigorous terms asserts that the idea of a people surrendering their control over a convention they had authorized is an absurdity(4) and that it was generally understood that the constitution

1-See also Green App. 208.

2-Globe 984.

3-ibid., II23.

4-See also Stuart App. I77.

framed by a convention was merely a proposition to the people who were to live under it. You refuse to accept the last vote," says Sen. Crittenden.(1) "It is these last expressions of the popular will that ought to govern on every principle just as much as that a former law must yield to a subsequent law in any point of conflict between them.----Could the constitution unaccepted by you, unauthorized by you, paralyze and annihilate the legislative power which your act of Congress had conferred upon the territorial government?" This constitution ~~could exercise~~ until accepted by Congress, he continues, bound no one. The convention could exercise no legislative power. "It [constitution] did not bind the future state; for, until you accepted it, what prevented the people from calling a convention the next day and altering or modifying it according to their views?" The Senator quotes the boundary question of Wisconsin as a precedent for this opinion. It is quite clear that popular sovereignty would be a mere "empty phrase" without these rights.

A similar line of reasoning is employed by Sen. Bell(2) in his defense of this vote. Admit, says he, that Lecompton was regularly formed," have the people so tied their hands thereby that they cannot alter or abolish the constitution; but once formed must wait until Congress pass upon it?" The obvious answer induces his conclusion that the matter examined on the "principle of the inalienable rights of the people as announced by the President, demonstrates that there is really no application from the people."(3)

It is a significant fact that the "Kansas Herald" of Leavenworth,- the prominent organ of the Lecompton propaganda and of pro-slavery- whose editor, Lucien J. Eastin, was a member of the

2-Globe II 54-55.

3-App.I32.

4-See also Bell Globe 1877. Foote App.I32; Douglas ibid. I95.

convention, gives the returns of the vote of Jan. 4th.without any comment.(1) Had there been any question in the minds of the local party as to the validity of this election, we should have columns of attack and denunciation. It seems plausible to conclude therefore that the charge originated in Congress to meet the emergency. In defending this assertion of the invalidity of the vote, the administration laid itself open to grave inconsistency. To the friends of Lecompton, the prime essence of popular sovereignty was "non-intervention" and upon this interpretation they had staked the issue. Now in practically the first crucial test of this doctrine, this political tenet is temporarily abandoned by its devotees.Curiously enough the North did not attempt to hold them responsible for the logical results of their creed but essayed answers to the insufficient and doctrinaire reasons urged against the election. In this they were entirely successful and the Kansas agitation might well have closed after this first sortie; for strictly speaking there was no legal petition for admission under Lecompton constitution.

II The Question of Submission.

The second great object of attack upon Lecompton was the the form of submission or rather as charged by the Opposition,the lack of it. The discussion of this question involves an elaborate study of the purpose and necessity of submission.

The Purpose of Submission.

The North did not insist upon submission because there was any virtue in it as an abstract formality; but simply because it was the fairest and most feasible way of determining the will of the people.(2)

[1] Herald Jan. 9th. 1859.

[2] See Douglas Globe 947.

The Meaning of Popular Sovereignty.

Did the doctrine of popular sovereignty recognize the necessity of submission? The North affirmed, in so far as submission was a means employed to ascertain the "will of the people". The South denied because according to their interpretation, the matter lay entirely in the discretion of the people who were rendered locally independent by the workings of the doctrine.(1) As early as Dec. 9th., Sen. Douglas had declared that popular sovereignty clearly meant the submission of all questions- not merely slavery."All questions -which are local not national, state, not federal".(2) Against this opinion, Sen. Bigler had urged a vigorous denial based upon the patent inconsistency of that idea with the primal idea of the doctrine.(3) Of all the Senators of the North, Sen. Harlan alone accepts unqualifiedly, the doctrine to mean an enabling of the people to act in "their own way". And the Majority Report(4) declares that any other conception would diminish rather than sustain the well recognized rights of the people creating a state government.(5) Conclusions will be held in abeyance.

The Meaning of the Kansas-Nebraska Act in regard to Submission.

No article in the Organic Act provides specifically for submission; but the doctrine embodied in that act is sufficiently ambiguous to warrant the conflicting opinions as to its import on that much-mooted question. President Buchanon, in his Lecompton Message(6) stated that the Organic Act did not require a submission of the whole constitution. The convention was only bound to submit that portion which relates to "domestic institutions of slavery". He draws a distinction between domestic institutions and

1- See Mason App. 78.

2- Globe I4.

3- Ibid. II4.

4- Sen. REpobts I3.

5- For precedent of popular sovereignty, see Hale Globe 3I9.- Who says that the first instance of it in America was in Jan.I775 when the people of New Hampshire drafted a constitution and defied the authority of King George.

6- Messages &c. 452.

those of a political character. These latter, he argues, are by 50 the Organic Act exempt from submission. Since the act had made no specific provisions for submission in any form, the reasoning in this tardy defense of the action of the convention seems lame unless perhaps the Kansas-Nebraska Act related exclusively to slavery.(1) But even then the authorization seems too vague to warrant this exception to the people's right to settle the whole matter in "their own way". The Kansas-Nebraska Act empowered the people of Kansas to settle their questions of local policy independent of Congressional interference. This clearly presupposed majority rule and and the institution of some legal device whereby the voice of the majority might be ascertained. It seems then that submission, as an approved method of determining the will of the people, might reasonably be expected under the terms of the Act.(2)

Is FOrmal Submission a Necessary Prerequisite?

Sen. Thompson was the first to make a careful study of the ratification of state constitutions and he concluded(3) from this examination of the precedents that, "If the people desire to act directly by their votes upon the adoption of a constitution they have the undoubted right to do so. But they have an equal right to delegate their power to a convention to act for them and to make and put in operation a constitution without submitting it to them for their further action". He finds that the constitutions now in force of the following states were not submitted for ratification to the people, but adopted in convention:

Vermont(I793),Connecticut(I8I8), Deleware (I83I), Pennsylvania(I838),North Carolina(I776 and I835), South Carolina(I790),Alabama(I8I9), Mississippi(I8I7 and I832), Tennessee(I836), Kentucky (I799), Arkansas, Missouri(I820), Illinois(I8I8),

1-This was immediately affirmed by Senators Bigler(Globe II4.)and Fitch (ibid.I37.) and emphatically denied by Douglas(Globe I37.)

2-For further opinions on the meaning and significance of the Organic Act, see Hale Globe 3I6;Bright App. I65;Bigler ibid. II3; Douglas ibid. I95. Gov. Walker interpreted the Organic Act to mean submission and thought the Minnesota Act only gave definitive construction to the Kansas-Nebraska Act. He says that the President and others of his circle concurred fully in this view. -Covode Investigation p.I04.

3-Globe 945.

1 See also Pugh Globe II4I; and Polk ibid. I064.

2 ibid. I033.

3 Green ibid. 44.

4 See Foster App. I45. "They [our fathers] knew that it [democracy] is a wholly irresponsible power; acknowledging no superior, for it is itself supreme; owing no obedience, for it is its own master; respecting no authority, for it is a law unto itself; subject to no control or restraint, except the still small voice of conscience, which is too often drowned in the tumultuous waves of party or of faction. It might sacrifice public good or private rights to any ruling passion or interest of the hour with impunity. It had robbed the rich to relieve the poor, and oppressed the poor to aggrandize the rich, with equal ardor or indifference. It had voted hemlock to-day and statues tomorrow, to its best citizens".

people of Kansas, through their legislature were content with committing the task of framing a constitution to a convention without imposing upon it any conditions with regard to submission; Congress if it respects the doctrine of non-intervention promulgated by it, has no right to require submission. It is none of our business.(1) Very true but what if the legality of that legislature be denied by a majority of the people? The South by completely ignoring the charges of fraud was perfectly safe in its assumptions.

The North, in the main, ignored this argument of the comprehensive rights of conventions and declared that it was simply an after-thought to defend the action of the convention.(2)

Was Submission Necessary in the Case of Kansas?

Waiving as immaterial any discussion of the general necessity of submission, the North maintained that there were special reasons in the case of Kansas rendering submission necessary there. In the first place , owing to the definite assurances given, everybody in Kansas regardless of political faith, expected a submission of the entire constitution.(3) President Buchanon had repeatedly pledged himself to a submission, not <u>partial</u> but <u>complete</u>. (a) In his Inaugural Address,(4) the phrases are vague but the meaning seems clear.(5) But in his official instmuctions to Gov. Walker and in his private communications to him, he commits himself irrevocably to the policy of entire submission. It is well known to all students of Kansas history that Gov. Walker could be prevailed upon to accept the onerous duties of governorship only upon the condition of the President's assurances that the constitution would be submitted.(6) President Buchanon not only acceded to this demand but even assisted Gov. Walker in the composition of the Inaugural Ad-

1-See Hunter Globe 1094; Bigler App. 113; Biggs ibid. 115; Toombs ibid. 126

2-See Foote ibid. 156.

3-ibid.

4-Messages &c. 431.

5-See Fessenden Globe 985. "Has it indeed come to this that no meaning is to be given to the inaugural address of the President of the United States while his oath of office is yet warm upon his lips?---Have we indeed descended so low in the depths of official demoralization, that the people of the United States can no longer place any reliance upon official messages, proclamations, and declarations of their highest functionaries?"

6-Covode Investigation p.106.

dress to Kansas in which address the submission of the constitution was definitely assured and by which assurances the fears of the people were greatly allayed.[1] (b) In his letter of July 12th. 1857 to Gov. Walker, the President said: "The point on which your and our success depends is the submission of the constitution to the people of Kansas.---On the question of submitting the constitution to the bona fide resident settlers of Kansas, I am willing to stand or fall. In sustaining such a principle we cannot fall. It is the principle of the Kansas-Nebraska bill, the principle of popular sovereignty, and the principle at the foundation of all popular goverrment. The more it is discussed the stronger it will become. Should the convention of Kansas adopt this principle all will be settled harmoniously, and, with the blessing of Providence, you will return triumphantly from your arduous, important, and responsible mission.----Should you answer the resolutions of the latter [Legislature of Mississippi] I would advise you to make the great principle of the submission of the constitution to the bona fide residents of Kansas conspicuously prominent.On this you will be irresistible".[2] His explanation later offered in the Lecompton Message,[3] that in these instructions he "had no object in view except the all-absorbing question of slavery", when considered in connection with the quotation cited above, sounds pitifully absurd and on the face of all evidence available President Buchanon can hardly be acquitted of unmanly desertion.

A further pledge (c) to the people occured when the Democratic convention for Douglas County in meeting to select eight delegates for the constitutional convention, passed resolutions requiring submission. The delegates, among whom was Calhoun

-And yet Toombs-App. I27- declares that Walker had no right to promise submission, as the matter lay in the discretion of the convention.

-Covode Investigation p.II2-I3. See also "Mr. Buchanon's Administration on the Eve of the Rebellion" p.40.

-Messages &c. 477.

published a signed statement a few days before election, denying most positively certain rumors, and re-affirming their determination previously given to submit the constitution."But for this pledge they would not have been elected".(1) Sen. Brown declares(2) that Calhouns constituency held meetings and relieved him of these pledges,- a statement which a search through local sources fails to verify and which is denied by Sen. Fessenden.(3)

(d) A study of local conditions reveals the fact that the Democracy of Kansas was divided on the slavery question with an apparently decreasing minority in favor of making Kansas a slave state.A large part of the fair minded element of the local Democracy demanded submission. Extracts from the "Lecompton Democrat",a leading organ of Kansas Democracy, and a paper which later denounced the Lecompton constitution proves this.In the issue of Sept.3rd I857, before the adjourned convention had reassembled, the editor argues that the constitution about to be framed must be submitted. He does not believe that sovereignty resides in a convention.(4) In times of peace, he continues, it would be well to assume that the people are agreed; but such acquiescence cannot be anticipated in these times of profound agitation. "In ordinary circumstances and in legal understanding the apathy of the people would be an acquiescence of those who chose to act". But it is well known that such apathy meant no such thing in Kansas. Furhtermore, there is the"undoubted fact that I5 counties comprising a large population are wholly omitted from the census and are not in any manner represented in the convention"----shall these people be disfranchised? "The whole country, an overwhelming majority of the South will answer, No!" Submission , he concludes, is therfore the solution.(5)

2-Testimony of Walker before the Covode Investigation. p.108.

2-Globe 553

3-ibid. 614. Sen Harlan ibid. 383 replies that these pledges were not official papers, which would not have made any difference according to Sen. Toombs.See f.n. supra.

4-It is evident from this statement that rumors of such a doctrine were then in circulation.

5-See also Stuart App. 175.

And, finally, say the opponents of Lecompton, the struggle in the convention itself is significant.(e) The real fierceness of this struggle in the convention, however, was apparently unknown to the Opposition else they would have made more of it in their speeches. An examination of the contemporary papers and later sources discloses interesting facts. Mr. Calhoun, in a speech in replying to his election to the presidency of the convention, said: "A constitution wisely framed, and properly, fairly, and honestly approved by the true settlers of Kansas will settle all the difficulties that surround us and will at once restore harmony to the Union".(1) That sentiment sounds like submission.

In fact, the question of submission began immediately to engross the attention of the convention. A majority report of the committee to whom the subject had been referred, recommended entire submission. The minority report read by a Mr. Blake Little, advanced an adverse opinion."Upon these two reports the great battle of submission and anti-submission was fought, extending through several weeks". During most of the time a majority of the delegates were for submission, but Gov. Walker's decision in the matter of the Oxford frauds turned the scale in favor of anti-submission by a majority of only one vote. Throughout these discussions, it appears that Mr. Calhoun was a leading advocate of out and out submission.(2) The decision to refer the slavery clause alone,was accepted as a compromise by both factions and the doctrine of "discretion" now begins.(3)

From this rather detailed study of the local situation, it seems safe to conclude that all the people of Kansas with the possible exception of a certain nondescript minority led by polit-

1-"Kansas Weekly Herald" (Leavenworth) Sept. I9, I857.

2-Testimony of H.L.Martin before Covode Inves. pp.I6I et seq.

3-"Herald Nov.7,I857. The editor of this pro-slavery organ, Lucian J. Easton, was a member of the convention and reports the proceedings.

ical adventurers, expected a submission of the entire constitution. The assurances of the President and of the Governor had induced the Free-State party to participate in the late elections, and the delegates elected were pledged to refer the constitution to the people for their approval. The expediency of submission does not appear to have been doubted until the Free-State majority became a menacing fact to pro-slavery hopes. The pro-slavery party undoubtedly prejudiced their cause by their refusal to submit; for by this action, they alienated from the support of Lecompton, a large portion of the substantial element of Kansas Democracy- an element which might otherwise have dignified their cause.

The administration denied that there was anything peculiar to the Kansas question to make submission necessary. Sen. Mallory (1) stated the case in the nature of a finality thus: Submission was not necessary in Kansas because (1) the people did not provide for it through the legislature; (2) nor through their convention; (3) and finally Congress had left the matter entirely with the people.

Why the Slave Clause only was Submitted.

Lecompton was not submitted at all for ratification. But instead a single section relating to slavery was referred to the people for their approval. (4) In defense of this action, the administration said that slavery was the only part of the instrument about which there was any serious difference of opinion. The people of the Territory were apathetic in regard to the other provisions and there was consequently no necessity of submitting them. It was slavery that concerned them, and this question, the convention submitted to them in the fairest possible way; "that is it was submit-

2-Globe II36.

1-In this connection, Sen. Bigler insinuates an interesting charge. He says that the original of the Toombs bill framed at the house of Sen. Douglas contained a provision for submission but that when the bill was printed the next day by Sen. Douglas, this provision had been dropped. From this conscious omission he infers that Sen. Douglas had left the question of submission with the option of the convention. Or if Sen. Douglas chooses to presume that silence in the Toombs bill affirmed submission, why did he in the case of the Minn. enabling act make a specific provision for such submission? Sen. Douglas made a satisfactory reply to this question and it may be considered one of those unfortunate lapses from consistency which marred the career of that eminent statesman.

3-See Green Globe 46; Hunter ibid. I094; For the assertion that there were two distinct constitutions offered the peopleviz; Lecompton with or without slavery-see Bigler ibid. 20; Covode Invesp. I70.

4-See Green App. 205; Pugh Globe II45.

ted alone as an isolated issue. If it had been incumbered with other questions there would not have been so fair an expression of the popular will upon it".(1) Therefore the judgement of the convention is confirmed. Besides its fairness, this policy of partial submission is not without precedent, says Sen. Polk.(2) The submission of a single article"has been done in the case of Oregon whose constitution is now before this Senate.(3)" In the Indiana constitutional convention the slavery clause was defeated only by a majority of two votes and yet it was not submitted. Likewise in the Illinois convention the slavery provision was voted down by a small majority and was not submitted.(4) Whereas in Kansas this subject of paramount interest is submitted in a way to permit of a popular decision upon it.

Against this plan of submission, the North arrayed the special objections, that regardless of the result of the election, slavery was fixed upon the new state and that the only question referred was that of the importation of slaves.(5) Not only had the people been deceived in regard to submission in general,but even upon the subject of slavery were they denied a free expression of opinion. The following extract from the "Lecompton Democrat"(6) is indicative of the local feeling of Kansans upon this point: "It is nothing but a dodge of the most disreputable character" and will serve to prolong the difficulties in the Territory. "They have chosen what in their sharp-sighted cunning seemed to them the more effectual mode of forcing the people to accept one of two alternative propositions, giving the majority absolutely no opportunity to reject a form of government which may not be in accordance with their sovereign will.----Better a thousand times, that their con-

1-See Polk Globe I064; Green ibid. 44; Buchanon Messages 476. To secure an intelligent vote, the only logical way is "to select the great principles, the leading provisions upon which the people are known to be divided and submit these to a separate and distinct vote". -Bayard App.I84. See also Bright ibid.I63

2-Globe I064.

3-See Poore 2: I506.

4-Cited from Polk ibid. supra.

5-See Stuart Globe I58; Wade ibid. II23; Cameron ibid. II34. The rebuttal of this charge is to be found in the Southern reinterpretation of the slave clause. For this see "Meaning of the Slave Clause".

6-Nov. I2, I857.

stitution should be rejected, than that it should be forced upon an unwilling and dissatisfied people".(1)

In view of the uncertain interpretation of the Organic Act with reference to submission; in view of the authoritative pledges by which the people were deceived into believing that the entire constitution would be referred to them for their sanction; in view of the undoubted presence of an overwhelming majority in Kansas in favor of a free state and to whom the partial and unfair submission of the slavery question must be repugnant; and finally, in view of the fact that these well known facts are not satisfactorily controverted by the friends of Lecompton, we are forced to conclude that there were exceptional reasons in the case of Kansas to make submission a necessity.

III The Question of Amendment Previous to I864.

The Lecompton constitution provided that there should be no amendment previous to I864. This provision offered the third important opportunity of assault upon the instrument by its opponents, who declared that forcing a detestable constitution upon an unwilling majority was wrong enough, but to bind their hands for six years was intolerable tyranny. The discussion centering around this topic involves perhaps the most important constitutional question raised in the whole debate viz: the right of amending regardless of constitutional provision.

The administration was urging the acceptance of Lecompton on the grounds of national expediency. The Union, it was averred was in imminent danger because of this agitation over Kansas. The Territory should be admitted at once, and when once a state its

See also issue of Jan. 7,. 1858, in which Lecompton is denounced. These references are especially significant because this paper appears to have been a leading Democratic organ in the pre-Lecompton days. Its editorials are unusually conservative in tone considering the agitated times.

people could by an undoubted right, amend or completely annul their constitution as they chose. If the prohibition of amending previous to I864 was not binding, clearly here was an opportunity for the Free-State majority patriotically to end this confusion by accepting Lecompton and then in their own good time alter it as their discretion might prompt. If this provision was not obligatory, without doubt the loyal Free-State citizens of Kansas prejudiced their own cause by their obstinate refusal to accept admission under the temporary inconvenience of a pro-slavery constitution. There was therefore great significance attatching to this discussion.

President Buchanon in his Annual Message(1) and in his Special Lecompton Message(2) as well had declared against the binding force of the prohibition of amendment. Says he:"The will of the people majority is supreme and irresistible when expressed in an orderly and lawful manner. They can make and unmake constitutions at pleasure. It would be absurd to say that they can impose fetters upon their own power which they cannot afterwards remove. If they could do this, they might tie their own hands for a hundred as well as for ten years"(3). One is disposed to inquire, why have they not the power if the doctrine of popular sovereignty be tenable? In this argument of the President, it will be seen that the basic idea is the nullity of the provision because of its inherent character. It is assumed that no constitutional convention has a right to authorize such a provision any more than any legislature can pass an irrepaalable law.

Sen. Green(4) exhibits the analagous cause in the Topeka constitution prohibiting an amendment prior to I865 and in commenting syas: "I have ever held this to be the true doctrine; that ~~whenever a government~~

4-Messages 453.

5-ibid. 479.

6-Nearly all of the Southern speakers supported the President in this opinion. See esp. Majority Report. in Sen. Repts. p.19.

7-Globe 906.

whenever a government undertakes to reform itself, it must comply with the constitution which prescribes the mode; but whenever the people, through their legal organization, choose to call a convention and exercise their original rights, they may disregard the constitution altogether".(1) The difficulty with Sen. Green's statement is the fact that the distinction he establishes between the "government" and "the people through their legal organization" in the matter of assuming the initiative is very vague.(2) It seems strange, too, that the men who now espoused the inalienable rights of the people above their constitution should almost in the same breath ridicule Seward's Higher Law doctrine, when ultimately both theories arise ~~from~~ an a common origin.

But, say the friends of Lecompton, even conceding the native force of the provision, it is rendered void and inoperative by the presence of an article in the Bill of Rights which clearly supersedes this provision and justifies our theory.

" ' All political power is inherent in the people and all free governments are founded on their authority and instituted for their benefit; and therefore they have <u>at all times</u> an <u>inalienable</u> and indefeasible right to alter, reform, or abolish their form of government in such manner as they may think proper.' "(3) The prohibition, being inconsistent with the Bill of Rights, was therefore deprived of its binding force.

Again it was declared that the article of prohibition in the schedule says nothing in regard to any alteration between the time of its adoption and 1864.(4)

Precedents in support of the argument that the prohibition was not binding were cited.(5) The constitution of New York and

1-See Green also App. 212 in which he elaborates upon this idea. Slidell ibid. 117 is very emphatic on "the absolute and inalienable rights of the people".

2-In this connection it is interesting to note that Sen. Green in denying the validity of the vote of Jan. 4th. took occasion to observe: "There is no real and true safety to our liberties and institutions but in a strict adherence to the spirit and letter of our constitutions and law; and there is no danger to our peace and our Union that we cannot easily escape if we will conscientiously adhere to them"-Sen. Rept.p.18

3-Cited by Thompson Globe 947.

4-See Hunter ibid. 1096 on this point.

5-Sebastian ibid. 1034.

the Charter of Rhode Island were altered contrary to their provisions. The states of Ohio and Indiana" contained prohibitions against amendment, the first for twelve years, the second for ten years; yet the latter was changed within the period prohibited. Maryland, Deleware, Pennsylvahia, by their acts of amendment have decided "that they may change their constitutions as they please".(1)

In answer to the natural query of the North of what was the purpose of such a provision if it was not intended to be binding, Sen. Sebastian answers,(2) "it was but a proposition of peace tendered to the people at a time when it was unknown which party would prevail in the final decision of the great question submitted to them; and whichsoever might be the victor in the contest it proposed a short acquiesence of the vanquished in the result".(3)

Sen. Pugh(4) enters into an elaborate proof of a general and a specific right to amend regardless of constitutional provision. A constitution made by a convention, he avers, can be unmade by a similar convention. This is in accordance with the universal law of compact that such compact can be abrogated by the power that made it. He refers to Lords Coke, Gilbert, Tindal, and other famous English jurists, the gist of whose opinions is" 'Let it be dissolved by the power which made it'". French law, too, recognized this right, he finds, and the Declaration of Independence is very clear upon it.(5) No one convention is higher than another. Hence this convention cannot exercise a sort of "teatamantary disposition". Constitutions may provide for the manner of revision; but when they make legal amendments practically impossible, such provisions become void. The specific right advanced by the Senator is implied in the terms of the prohibition itself in connection with

1-Green App. 212.

2-Supra.

3-See Pugh's explanation Globe 1144.- "This constitution is an experiment; it is untried in all its provisions; it may work well, it may work badly; and therefore the good people of Kansas have said, until 1864 this which is---a mere experiment, shal remain subject to the will of the people, by thier proper authorities, in due form of law to amend and perfect it,----; but after 1864 if the constitution should stand so long----if it proves to be insufficient, you shall be subject not to a prohibition of amendment, but you shall proceed with the ut- most deliberation. It shall then require more than a majority in the legislature to submit any question to the people."

4-ibid. 1142 et seq.

5-See Stuart App. 178--who replies that the Declaration of Independence is a recognized grouping of revolutionary rights.

the Bill of Rights. In closing the Senator seeks to put an end to the ambiguity of this prohibitory clause, by offering an amendment which in plain terms annuls the operative force of the provision. This procedure, though apparently prompted by sincerity, does violence to the author's consistency. For how can such an amendment be considered other than "intervention" on the part of Congress?

In arriving at his conclusion as to the non-binding character of the prohibition, Sen. Bright[1] begins with a disparagement of the real importance of state constitutions. The people are the origin and seat of political power and constitutions flow <u>from</u> them instead of being concessions <u>to</u> them. Consequently constitutions are mere expedients, mere pieces of political machinery to guide and restrict the agents of the people. The power of the people is, therefore, plenary at all times regardless of constitutional provision. "If a royal power cannot rightfully abrogate constitutions it is because the rights of other parties intervene. In our country there is no other party but the people". And "when the people of a state determine to change their constitution, there is no political body in existence which can interpose". Herein lies the distinction between our Federal <u>compact</u> and state <u>constitutions</u>.

Sen. Bayard reaches the same conclusion by assuming as his premise that the basis of our state governments presupposes two axioms:[2] (1) the right of government rests in the people at large; and (2) "that a majority of those who choose to act may organize a government; and the right to change is included in the principle which gives authority to organize.---The constitution of a state cannot restrain or impair this; because it exists in the

/- App. I65.

2-ibid. I88 et seq.

people outside of the constitution". *This inherent right of the majority when asserted may be extra-legal but "cannot be revolutionary if it is in accordance with the will of the existing government".

Throughout these speeches runs the collateral idea of the greater facility with which the local question of slavery may be settled once admission has been accomplished.

The North conceded a right to amend a constitution regardless of legal provision but such a right was a revolutionary right.(1) The only legal right is the one provided for in the constitution,(2) and the simplest construction of the provision under discussion, made clear that no legal right existed to amend previous to 1864. Any other interpretation was simple equivocation. The article in the Bill of Rights has no bearing; because that clause referred to the general right of last resort and could not take precedence over the provision of a specific mode of amendment.(3)

While the right of revolution was affirmed by the OPPosition, it was declared that the administration was promulgatimg a dangerous doctrine when it avowed that " a majority of the people of a state may set aside all the guards in their constitution against sudden and capricious changes of its provisions and change it as often as it pleased".(4) Such a doctrine reduces all Organic laws to a level with the acts of the legislature and affords absolutely no protection to minorities. Further than this, such a theory might easily lead to domestic insurrection and necessitate Federal intervention.(5)

Citations of precedent were not convincing, because revision of the organic law contrary to constitutional provision was

1-See Douglas Sen Repts. 73. and others.

2-Douglas loc. cit. also Wade, Globe II24; Foster ibid. 989;

3-Douglas App. I95.

4-Bell ibid. I39.

5-Douglas Sen. Repts. 73; Foster Globe 989.

a revolutionary act regardless of precedent.(1) The "irrestible power" of the people in the sense employed was denied. "People are sovereign to be sure"; but "the constitution which sovereighty makes, in all its parts and in all its purposes, must be the rule of conduct for all. It cannot be abolished except in the manner prescribed and pointed out in the constitution itself, if any manner is prescribed.---The people must exercise their sovereignty through agencies,---through representatives and governments, --- safely through constitutions. If they could not make constitutions bind themselves their sovereignty would never be safe".(2)

The Opposition further insinuated the charge of insincerity upon the part of the South in thus advancing a theory known by them to be untenable and which would be disavowed as soon as admission under Lecompton was effected. And finally, while conceding the argument of national expediency, the North declared that peace could not attend upon admission gained by the persuasion of assurances that must fail of realization.

IV Minor Questions.

I. Meaning of the Slave Clause.

While Kansas was yet a Territory, slaves had been brought into it. The slave clause in Lecompton which was claimed to fix the institution of slavery upon the state regardless of the popular vote, was defined to be a mere protection of the property value in slaves. It prevented confiscation without compensation; it tolerated slavery but did not establish it: and it did not include progeny. It was the same provision as applied in New Jersy and Pennsylvania where a few slaves still existed although slavery had

/-See Foster Globe 989; Bell App. I39.

2-Crittenden Globe II59.

been abolished years before.(1)

2 Is Lecompton Republican in Character?

As an illustration of the fact that the Republicans occasionally indulged in "special pleading", the objections to the republican character of Lecompton are here recorded.

(I) Sen. Foster(2) found that by reason of the conflicting provisions concerning free negroes, they could not be exiled from the state because they were free and they could not reside there because they were free negroes. Therefore they must be put to death. Therefore Lecompton is not republican. Q.E.D..

(2) Suppose says Sen. Clark(3) that the legislature should provide for general emancipation by declaring that every free negro child born after 1870 should be free. Free negroes cannot live in the state. The infant must be carried out. It is separated from its slave-mother and its life is thus put in jeopardy. The same conclusion follows.

There was really no serious objection made to the republican character of Lecompton- a fact that was largely dwelt upon by its friends.

3 Does Admission Mean Peace?

Yes, Because it will localize the issue.(4) It will prevent local anarchy.(5) It will reassure the South.(6)

No, because it is impossible to localize the agitation. Admission will only serve to give new exasperation to the slavery question.(7) Public sentiment of the country at large is too greatly aroused against Lecompton(8) and local insubordination is probably too great(9) to insure a peaceful subsidence of excitement with admission.

1-Bayard App. I86; Pugh Globe II45; Buchanon Messages 454.

2-Globe 988.

3-App. 93.

4-Buchanon Messages 479.

5-Bigler App. II4.

6-Slidell ibid. II7.

7-Crittenden Globe II57.

8 Clark App. I07; Cameron Globe II34.

9 Douglas Sen. Rept. 67.

4 Meaning of the Kansas Question.

"It is not the importance of holding slaves in Kansas . . . that is the great question; but the decree is to go forth from the decision of this question whether the South shall be permitted to expand as well as the North".(1) The South is, therefore, interested in Kansas only so far as it affords a test of Northern intention.(2) The vital interests of the whole nation, replied the North, are concerned in this issue. "Our existence as a republican government rests upon the principle involved in this question";(3) not only because "free government is imperilled" through the incentive given to the proletariat and political boss by these uninvestigated frauds,(4) but because at bottom the real question at issue is the right of the people to be consulted in the formation of their fundamental law.(5)

1-Green App. 2II.

2-Slidell ibid. II7. Also Cobb before the Covode Inves. p.I67.

3-Cameron Globe II34.

4-Trumbull ibid. II63.

5-Foote App. I53.

A Study of the English Bill.

The members of the Committee of Conference were: William H. English, Alexander H. Stephens, and William A. Howard from the House; and James S. Green, R.M.T. Hunter, and William H. Seward from the Senate. The Senatorial contingent submitted several propositions which were unsatisfactory to the members from the House. Mr. English then proposed a plan which was acceptable to the Committee.(1)

The author of the measure was a prominent Democratic member of the House Committee of Territories and throughout the session had been stubbornly opposed to the Lecompton constitution because of its non-submission. Mr. English, it appears , was politically a very ambitious man and he perceived that a success ful solution of the Kansas imbroglio favorable to Southern interests would bring to its author from a grateful slavocracy, the Presidency of the United States. It is asserted, therefore, that Mr. English's measure may be considered as a bid for the Presidency which it was predicted by "hosts of citizens" and many newspapers would be his reward. But it appears further that Mr. English in this measure was actuated by a sincere desire to abate the Kansas agitation and bring peace to a distracted country; and that the honors sequent to his success would be the incidental rewards of a patriotic effort.

The compromise measure, known as the "English Bill", was based upon a reduction of the land grants claimed in the ordinance of Lecompton. According to the terms of the bill, the proposition submitted for the votes of the people of Territory was admission under Lecompton and the usual formula of land of land grants. If there was a magority "For the proposition of Congress and admis-

(1) See "A Biographical History of Eminent and Self-Made men of the State of Indiana",-Art. "Wm.H. English" Vol.II p.217.

sion", Kansas was to be admitted at once with Lecompton by proclamation. If however, there appeared to be a majority "Against the proposition of Congress and admission" the privilege of framing another constitution was withheld until by a legal census, it should be formally ~~be~~ ascertained that the population in the Territory equalled the ration required for one member in the House of Representatives. The control of the election was to be vested in a board made up of the Governor, the Federal District Attorney, Secretary, President of the Council, and Speaker of the House of Representatives.(1)

Upon the presentation of the English Bill, several anti-Lecompton Democrats showed hesitation. Many shrank from further opposition. Among them, Sen. Douglas seemed to waver. Sen. Broderick declared that he would denounce him in the Senate if he faltered. Sen. Douglas decided to continue his fight, although at a mixed conference of Republicans and Anti-Lecomptonites, "while avowing his own opposition to the bill [he] stated it as his opinion that those who had hitherto opposed the measure might consistently go for it, because they could claim that it did 'virtually' submit the question to the people".(2)

The Question of the Ordinance.

The Committee of Territories in their Majority Report, had recommended a rejection of the ordinance. Anticipating possible objection to Lecompton by reason of the terms of this ordinance, the friends of the constitution had early in the session affirmed that the ordinance being no organic part of the constitution, its disallowance could therefore in no manner affect the validity of

1 These officials are local not national.

2 Wilson's Rise and Fall of Slave Power p.563. At the beginning of the session there were 23 anti-Lecomptonites in the House and only 12 remained firm in their opposition. ibid. 564.

the constitution.(1)

The opposition for the most part remained silent on this subject until just before the final vote was to be taken upon the measure.(2) Sen. Douglas(3) then shrewdly inquires where Congress gets the right to separate the ordinance from the constitution when the convention had included them both in one instrument and so submitted them? The convention in that action, he continues, says in effect we are willing to be admitted on those terms. "If you strike out any portion of the terms what evidence have you that the people of Kansas will still be willing to come into the Union?"(4) Either you must accept or reject the document in toto. To this, the administration answered, that the ordinance was no part of the constitution because it was simply a proposition attatched to the constitution and not signed by the members of the convention.(5) But unfortunately for this argument, it could be showed that in the original publication of the constitution, the ordinance preceded and hence was included in the signed document.(6) It was further declared by the South that every state from Ohio down had demanded more land than Congress had given(7) and that the ordinance was the familiar form employed by them in their attempts to bargain with Congress.(8)

Sen. Douglas had offered precisely the argument later adopted by the administration as a justification of the English bill; and yet it is a significant fact that his opinion was now overruled decisively and the Senate bill passed making no specific grants to the new state. The "modification of contract" at this juncture presented no difficulties to the administration and the objections of Sen. Douglas were considered as mere captious obstruction.

1-See Green's speech of Dec. 26th. Globe 42. and Majority Rept. in Sen. Repts. p. 20.

2-Sen. Stuart in his speech of Dec. 23rd.-ibid.I58- had spoken against the ordinance.

3-ibid. I258.

4-ibid. I259.

5-Benjamin ibid. I258.

6-See Kansas Herald Nov. 2I, I857. also Wilson Globe I259.

7-Pugh Mid. I258.

8-Benjamin ibid. I258.

In offering the English bill, the administration abandoned its original position. This measure , it was asserted, though agreeing with the Senate bill in all essentials was based primarily upon a modification of contract and provides "for the contingency wherein a majority might refuse this modification of contract". The Senate bill had presumed upon this popular ratification,(1) and had left the land question open, while this bill closes it.(2)

If the Senate bill did not provide for this contingency, when the attention of the Senate was called to it at the time, "Why on earth did they pass it at all?" inquires Gen. Collamer.(3) This explanation he contends is a mere afterthought. The truth is the ordinance is no part of the constitution. Our refusal to allow the grants in the ordinance settled the matter. It is said that Iowa is a precedent for the English proposition. Iowa offered herself for admission with a republican constitution and certain boundaries which Congress changed. Congress then agreed to admit the state upon condition that her people would consent to that modification of the boundary, assent to be made by public vote, and in case of ratification the state to be admitted by proclamation.(4) Sen. Stuart replies(5) that the cases of Iowa, Michigan, and Ohio are not at all analagous. "In these cases there were actual boundary disputes existing between the states. Ohio and Michigan had citizens under arms and Congress patriotically seized the opportunity to settle the dispute. There was no objection to the constitution. In Kansas there is no dispute as to the land donation. If it were submitted alone not a soul would vote against it".

Sen. Green doubts whether a state could not tax the

1-Hunter Globe I8I6.

2-Green ibid. I824; see also Toombs ibid I872.

3-ibid. I8I9.

4-Hunter ibid. I8I7.

5-ibid. I846.

public lands[1] but he was not followed in this point by his colleagues.[2]

The requests for land in the ordinance were said to be excessive. Viewed casually, they certainly were; for the convention had included in their ordinance, demands for bounteous subsidies for railroads, and these grants together with the usual formuàa comprised a huge total. It may be said at this point that Congress had been in the habit of disallowing large portions of the grants requested by the petitioning states and then later in special enactment, bestowing them lavishly as subsidies for railroads and other improvements. Recent legislation of this character in favor of the neighboring states, had no doubt affected the Lecompton convention in its requests and this fact offers some justification for its demands. A brief resume of these grants will prove instructive.

Illinois.[3]

Sept. 20,I850.[4] Illinois Central Ry.. Every alternate section for six sections in width on each side of the railroad aggregating 3,75I,7II.73 acres.[5] A similar grant to the Mobile & Ohio Ry.

Missouri.

June I0, I852.[6] Hannibal & St.Joseph Ry.-same grant- 603506.39

Missouri Pacific Ry. do II6I204.5I

I764710.90

Arkansas and Missouri.

Feb.9,I853.[7] St.L.I.M.& S. Ry. same grant

In Ark. I793I67.I0

" Mo. 63294.I7

I856461.27

Iowa

May I5,I856.[8] For four railroads across the state east and west. Same grant and aggregating 3426929 acres.

Territory of Minnesota.

1-Globe 1825.

2-On this question see Sumner's argument(pro) Globe 1st. Sess.320 App.203. reprinted in Bulletin of Uni. of Wisconsin vol.2 p.39. Also (contra) Benjamin Globe 1258; Cooley's Principle of Const. Law, p.63 cites- Van Brocklin V Tennessee 117U.S Ry. Co. v Mc Shane 22 Wall 444; Wis. Cent. R.R. Co. v Pric 113 U.S. 446.

3-The material for this resume is based on the Statutes at Large, Donaldson's Public Domain, and "Congressional Grants of La in Aid of Railways"-John Bell Sanborn in Bulletin of Uni. of Wisconsin #30.

4-Stat. 9:466.

5-Pub. Dom. 269.

6-Stat.10:8

7-Stat. 10: 155.

8-Stat. 11:9.

March 3,1857.[1] For several railroads, smae grant aggregating

5II8450 acres.

The Lecompton Ordinance asked for:

1. Sections 8,I6,24,36 in each township for common schools. (This was double the usual grant.)
2. All the salt springs and mineral lands. (Usual grant was 72 sects. maximum)
3. Five per cent of the net proceeds of land sales.
4. 72 sections for a university.
5. Each alternate section for I2 miles on both sides of a railroad east and west across the state.

Each alternate section for I2 miles on both sides of a railroad north and south across the state.

This grant according to Sen. Stuart[2] would aggregate I6,680,960 a. out of 85,I55,840a. the total acreage of the proposed state;[3] and according to Mr. English,23,592,I60 a. worth at the minimum government price$29,490,200.[4]

The fact that the convention asked for double the usual grant in several instances, gives rise to two possible suspicions:

Ist. Perhaps the political adventurers who were promoting the Lecompton movement actually expected that the Democratic majority in Congress would make these grants which could be manipulated later into a tangible reward for their services. Or

2nd. Perhaps the excessive request was simply utilized to popularize a locally odious instrument.[5]

It is equally possible however that the convention may have considered such large inducements necessary for the promotion of internal developements in their unsettled country.[6]

1-Stat.II: I95.

2-See his elaborate table Globe I63.

3-Nearly one-fourth of the state and this not including the minera lands and salt springs.

4-Globe I766.

5-See Stuart ibid.I847 on this.

6-The Topeka constitution made no requests for land.

The Leavenworth constitution besides asking for the usual formula, requested as subsidy the usual aid(6sects. on each side) for three railroads traversing the state east and we and one north and south. This constitution was discredited by a large portion of the Free-State element.

Wyandotte constitution,besides the usual formula, asked for 4,500,000 acres for railroads and a large grant for internal improvements. Congress disallowed all but the usual formula.-Stat.I2:I26

Was the Constitution Submitted?

Not in direct terms certainly, said the Opposition. But by reason of the result attending the vote, the constitution is virtually submitted; since the bill provides an opportunity indirectly to reject it.(1) Therefore the South was inconsistent since by this present measure it had abandoned its original position on the question of resubmission.(2) But said the administration emphatically "the constitution is not submitted." Certainly not, because Congress has no right to submit it. True, the proposition referred may involve in the mind of the voter the question of the approval of the constitution but that is not Congressional submission.(3) We have acquiesced in the constitution. We now simply reject the ordinance and offer to substitute a new grant,(4) a right we have because the ordinance was primarily addressed to us in the nature of a contract; whereas the constitution was not.(5)

But despite this excellent quibbling, it is obvious from the terms of the bill, that the constitution is in effect submitted and that is all that the North claimed.(6)

Is the English Bill a Bribe?

The chief charge laid against the English bill was that it was a "bribe and a threat". An examination of the historical developement of the land grant policy of the Federal government will assist us materially in the consideration of this charge.

(See table next page.)

It will be seen from this table that as early as I820, the United States had developed a definite formula of land grant to new states and further that the grants given in the English

1-See Crittenden Globe 1818; Collamer ibid. 1818; Stuart ibid. 184 Douglas ibid. 1868; Seward ibid. 1895; Kans. Herald-May 8, "This [English Bill] is nothing more than a practical submission of the constitution &c."

2-Collamer Globe 1819; Wade ibid. 1822-It has by this bill abandoned the absurd doctrine of the omnipotence of conventions. See also Douglas ibid. 1869.

3-Pugh ibid. 1848

4-Hunter ibid. 1817.

5-Green ibid. 1825; Toombs ibid. 1873.

6-For "Meaning of the Bill"- see Collamer ibid. 1819 "You are to have a constitution with slavery or slavery without a constitution, but slavery at any rate", and is planned to induce votes for Lecompton. See Brown ibid. 1871.

State	Date	Com. Sch'l	Univ	Pub. Bldgs	Saline Lands	Land Sales	Prison	Remarks.
Vermont	I79I							
Kentucky	I79I	No Provisions. Were not public land states.						
Tenn.	I796							
Ohio EA	I802	s I6 ✓	-	-	6 mi. ✓	5% ✓		
La. EA	I8II	-	-	-	all	5%		
Ind. EA	I8I6	s I6	36s ✓	4s ✓	and 36s ✓	5%		
Miss. EA	I8I7	-	-	-	-	5%		Same as La.
Ill. EA	I8I8	sI6	72s	-	all	5%		
Ala. EA	I8I9	sI6	72s	I620a	all and all 36s (I2	5%		
Mo. EA	I820	sI6	72s	4s	and 6s ✓	5%		
Ark SEA	I836	sI6	72s	I5s	do	5%		
Mich SC	I836	sI6	72s	5s	do	5%		See SLLS.57.
	I835	do	do	4s	do	-		Precedent for presenting a Cmt. with ten Ea.
Fla.		Enabling Act makes no specific grants.						See also 5 Stat 788 See Donaldson
Texas	I845	Not a public land state- exceptional.						
Iowa SEA	I846	sI6	72s	5s	all (I2) and 36s.	5 ✓		
Wis. EA	I846	sI6	72s	I0s	do	5%		Precedent for attaching request to Const
Cal.	I850	I6-36 ✓	72s.					See 10 Stat 246+8.
Minn. EA	I857	I6-36	72s	I0s	do	5%		
Ks.(Topeka)	I856	I6-36	72s	I0s	do	5%		
" C-M.Comp	I858	I6-36	72s	I0s	do	5%		
" PughBill	I858	I6-36	72s	I0s	do	5%		
" English	I858	I6-36	72s	I0s	do	5%		
Ore. AA	I859	I6-36	72s	I0s	do	5%		See 2 Poore 1037.
Kans. AA	I86I	I6-36	72s	I0s	do	5%		
Nev. EA	I864	I6-36	72s			5%	20s ✓	
Neb. EA	I864	I6-36	72s	20s	do	5%	50s	
Colo. EA.	I875	I6-36	72s	50s	do	5%	50s	

EA = Enabling Act
SEA = Supplementary Enabling Act
AA = Act of Admission
SC = State Constitution submitted without an Enabling Act
✓ = Precedent

Bill were identical with those for Minnesota and for Kansas under the Topeka constitution and the Crittenden-Montgomery compromise. This latter fact was well known to the members of the Senate, and although the charge of bribery is asserted in emphatic terms,(2) it is quite clear that the term "bribery" is used in the sense that the measure is an inducement,- an unfair temptation- since the bill conveyed the idea that this is the last chance for obtaining the usual dowry.(2) The people at large and the later historians have apparently lost sight of this fact, and recorded the charge of bribery as if the land grant were an original departure for this specific purpose.(3)

The South met the issue by inquiring how a measure reducing a grant from 16 million acres to 4 million acres and thereby saving the government $25,000,000. could be construed to be a bribe?(4) Or how could it be a threat when everybody knew that when Kansas did come in she would get the usual bounty?(5)

But these interrogatories do not explain away the indubitable fact that the bill did deliberately offer an inducement for the acceptance of Lecompton. It did not present a fair submission of either the land proposition which as a single issue was very acceptable to Kansas; or of Lecompton which was very detestable, but linked the fate of both measures in such a way as to prejudice the whole bill.

Special Objections to the English Bill.

I. The Bill is Illogical.

It was complained that there was no logical connection between the vote and the result.(1) The land question is the only one directly submitted but a consequence is to flow from the vote "per-

1-See Hale Globe I82I; Wade ibid. I822; et.al. Wilson ibid. I874 who finds additional grievance in the fact that unless Kansas be admitted prior to July Ist. she will lose her 5% share of the proceeds of the large land sales to be made then.

2-Crittenden ibid. I8I4; Douglas ibid. I864.

3-See 5Schouler 399; Holloway's Kansas,533; 2 Rhodes 299; Annals of Kansas 236; 6 von Holst 235; Morse' Lincoln I:II0; Storey's Sumner I69; Herald of Freedom, May 22,I858.

4-Green Globe I824; Pugh ibid. I852; Brown ibid. I872; Kansas Herald, May I5, I858.

5-Toombs Globe I873. et. al.

6-Collamer ibid. I8I8.

fectly arbitrary in its nature and altogether illogical in the conclusion"- the sole issue or "collateral consequence" being "infinitely more important than the direct question".(1) "You vote for the incident and the principle is to follow".(2) The workings of the bill can best be illustrated by the ingenious analogies furnished by several speakers.

Sen. Stuart(3) likened its action to the angler who says: "I have no idea, Mr. Fish, that you will fasten this hook into your gills-not at all; the proposition that I submit simply is, will you swallow the bait? that is all".

Sen. Doolittle(4) offers an elaborate and literary analogy. "Imagine", says he, "the case of a parent with a large possessions having a large family of highly educated and accomplished daughters. As they grow up and arrive at the age of maturity and marriageability, one after another they are settled and established in life, and a portion of his vast inheritance is set off to them. A younger daughter, not yet arrived at the age of perfect maturity hardly marriageable as yet, at that tender and interesting period when the artlessness of childhood adds to the charms of womanhood, is sought in marriage by two rival suitors; the parents' consent is asked. One presents himself, an intelligent, frank, honest, noble youty, who has wrought our his own fortunes by his own strong hands; and he has sought, received, and secured her affections. Another presents himself who claims to be of noble blood- to belong to the first families of the land; too proud to labor for himself, but ever willing to live upon the labors of others---- and he seeks her hand in marriage also. He plies every art, attempting sometimes by force and sometimes by fraud to obtain her con-

1—Crittenden Globe 1814.

2-Wade ibid. 1822. see also Seward ibid. 1894.

3-ibid. 1843.

4-ibid. 1854.

sent. She rejects his suit again and again. Her elder sisters take a deep interest and an active part in the controversy, are about equally divided, and the result even threatens to sunder their family relations. She comes to her parent for advice. She fully avows her affection for the one and her detestation for the other; and what does he propose? He says to her, ' My daughter, if you will marry this man of family and pretensions I will give you houses and lands. I will endow you with a large and independent fortune as I have all your sisters that I have settled before you; I will establish you at once in a high rank in society. You shall have all the deference and consideration which grow out of that establishment, on a perfect equality with your elder sisters; but if refuse to marry him, you shall not marry at all, so long as I live or at all events so long as I keep you under my control; and until you arrive at the full age of your majority you shall not marry any other; and thoggh you do not choose to marry him, you shall continue to associate with him and receive his attentions".(1)

2. Indirection.

The bill forced the rejection of a land grant which "every man, woman, and child in the Territory desires".(2)

3 It Cannot Give Peace.

The bill imposes unfair conditions. The people of Kansas will reject Lecompton. Congress cannot prevent them from framing new constitutions. That privilege is guarahteed by the right of petition. Hence the old contentions will continue and agitation will be prolonged.(3)

4. The Bill is no Compromise.

1-See also Seward's analogy to a lodge vote- Globe I895.

2-Douglas ibid. I870.

3-Collamer ibid. I820; Wilson ibid. I874; Bell ibid.I879.

4 The Bill is No Compromise.

The bill offers no alternative as did the Crittenden-Montgomery amendment. It gives Kansas "the choice of being a slave state, and only that choice". It is no compromise.(1) This was no captious complaint on the part of the North. Lecompton was the source of disaffection, and had this bill put the constitution fairly before the people, the other provisions would hardly have been objected to. The South, on the other hand, was irreparably committed to Lecompton and such being the case, it could not (at least in this session) have put the constitution in direct jeopardy. The administration yielded to the pressure of the times by framing a measure which permitted of an <u>indirect</u> defeat of the constitution. Only from this standpoint, and in this negative sense can the English Bill be considered a compromise.

5 The Personnel of the Election Board is Unsatisfactory.

The Crittenden-Montgomery amendment had authorized a board of four commissioners to supervise the election: the Governor and Secretary of the Territory (Executive),the President of the Council, and the Speaker of the House of Representatives(Popular). This formed a balance of power "to pledge against fraud of unfairness". The board under the English Bill is increased to five by the addition of the Federal District Attorney, making an executive majority. The exedutive control of the elections in Kansas heretofore had been a matter of grievance- par excellence. Hence the plausible charge of the North that this increase of the board was "unnecessary, un-fair, and suspicious";(2) and that it savored "too much of the candle-box or of the Cincinnati directory".(3)

1- Seward Globe I896. See also Biog Hist.of Eminent and Self-Made Men of Indiana 2:2I8 in which Mr. English explains the neces- sities of the situation.

2- Crittenden Globe I8I5.

3- Wade ibid. I823. See also Collamer ibid.I8I9; Douglas ibid.I870; Wilson ibid. I874.

By the agreement of both sides, Kansas had been made an exception to the rule of population, because she was the source of so much trouble to the country at large. It was objected by the North that the administration had waited too long for the application of the rule now; that as long as there was any hope for Lecompton, there was no question raised as to the population; and that this abandonment now comes as a penalty upon the people of Kansas and an insult to the North.(1) True, answered the administration, there was an exception made of Kansas two years ago "provided you come in and make a final disposition of the whole matter." If the people are unwilling to do this, they forfeit their privilege. The next best thing for the peace of the country is to say, "You must be quiet until---you have more stability, more people and give us at least a truce and a breathing spell".(2) There was much reason in this reply. Kansas had involved the two last Congresses in bitter wranglings and the business of this great Union was at a standstill because of the feuds of this petty community. A mere handful of men was convulsing the whole country. The attention given to Kansas seemed out of all proportion to its importance from a national point of view and in Congress it had served for four years to be an effectual obstruction to legislation. The safety of the Federal government was imperiled by this dangerous agitation and true patriotism would seem to demand that the question be removed from the Halls of Congress until the times quieted and the passion of the sections had somewhat abated.

Under ordinary circumstances to have required Kansas to wait until she possessed the requisite population would have been no injustice considering the exigency of the times. But the circum-

1—Wade Globe 1823- "One slave-holder for the purpose of admission of a Territory as a state is worth more than 20 free men". a1 Also Crittenden ibid. 1815.

2-Hunter ibid. 1817; Pugh ibid.1852; Toombs ibid.1873.

stances unfortunately were extra ordinary. Had there been a closely divided people on the question of slavery, this provision preventing the recurrence of constitutional conventions with their attendant agitation would have been fair and justified. But in view of the fact overwhelming majority of free-state people, who if allowed were able and willing to draft a suitable constitution without further confusion, this restriction becomes not only inequitable but really defeats the purpose it seeks to subserve. The restriction was not good statesmanship; it could not be said to be actuated by the "self-preservation" instict of our national government. It was the South that now, by this act, became sponsor for the agitations over Kansas.

7. The Bill is a National Bounty for Slavery.

The provisions of the proposition make the equality of states absurd. It is a national bounty for slavery - an ultra-Northern opinion.(1)

8. The Bill is Intervention.

Reversion to the rule concerning population, it was claimed- by which an act of the Kansas legislature at the legal time is to prescribe how and when the constitution is to be submitted, is to that extent a repeal of the Organic Act and is "intervention in its most obnoxious form".(2) It is "intervention with a bounty on the one side and a penalty on the other"; for Congress has no right to intervene and control "the decision that the people may make on this question".(3) This charge furnishes another illustration of the inadequacy of the doctrine of popular sovereignty. Owing to its ambiguity, nearly every act upon the part of Congress

1-Hale Globe I82I.

2-Stuart ibid. I844.

3-Douglas ibid. I868.

could be arraigned as a violation of non-intervention.

9. Why Lecompton?

"Why does the administration insist upon Lecompton?" queries the Opposition, "when it is known that such insistence is galling to Kansas?" "Because", it is answered, "Kansas has no other constitution. Usage demands a constitution if she comes in as a state. The Topeka constitution is not legal, nor is the Leavenworth constitution now in the process of promulgation, strictly ~~le~~ legal. There is, therefore, no alternative but Lecompton if Kansas is to be admitted.(1)

Attitude in Kansas toward the English Bill.

The conservative law-abiding element of Kansas was becoming weary of this interminable strife and the factional domination of the political adventurers of both parties. Governor Robinson had said that if there was no doubt as to how the certificates would be issued for the eleetion of Jan.4th., which should put the Free-State party in control, it would be well to submit to Lecompton temporarily.(2) G.W.Smith, the Free-State Governor-elect under Lecompton, issued a lengthy letter in the "Herald of Freedom" of June 26, 1858, in which he favors the acceptance of the English Bill because it "puts the matters in our hands" and ultimately defeats the plans of a designing South.

The "Lecompton Democrat", in an editorial addressed to the conservative people of the Territory, favors the acceptance of bill for the following reasons:(3)

I. Because the power will then be in the hands of the people.

2. It will abolish our present District Courts and "compel

1-Pugh Globe 1849.

2-Cited from Collamer ibid. 1820.

3-May 13, 1858.

the legislature-elect to clothe the county courts with power necessary to punish the army of criminals who have taken refuge on our plains".

3.In 30 days we can have a session of the legislature-elect adopt a code of laws and provide for a new constitution.

4. We may obtain a postponement of the land sales which will bring certain benefits.

True, continues the editorial, this action does involve a temporary ratification of Lecompton until our legislature can make another;but this is justified when the great boon of statehood is considered.(1)

The "Herald of Freedom" opposes the bill; because its acceptance "involves a humiliating compromise of principle. It stultifies the Free-State remonstrances heretofore". Because it is not certain that we have power to amend the constitution at any time, and ,finally, because of the unfair inducement implied in the approaching land sale.(2)

Could the Free-State party have been assured that they possessed the power of amending Lecompton at any time regardless of constitutional provision, there is some reason to believe that the English Bill might have been received and Lecompton tolerated temporarily as a peace measure by the people of Kansas.

Bribes to Pass the English Bill.

The failure of the Senate Bill to become a law, roused the administration to herculean effort to put the compromise measure through. There seems to be no doubt that executive patronage in the form of government contracts, political offices, and land grants, was extensively employed by the President and his friends

1-ibid. June 17, 1858. See also "Kansas Herald" June 19, 1858.

2-See issues of May 22, June5, June12, June19, and June26, under the caption "Why the English Proposition Should be Voted Down.

in their efforts to enact the bill into law. The report of the Covode Investigation,[1] a commission which carefully canvassed the whole controversy, presents the following comprehensive conclusions:[2]

"Ist. The emphatic and unmistakable pledges of the President as well before as after his election, and the pledges of all his cabinet to the doctrine of leaving the people of Kansas 'perfectly free to form and regulate their domestic institutions in their own way'

2nd. The deliberate violation of this pledge, and the attempt to convert Kansas into a slave state by means of forgeries, frauds, and force.

3rd. The removal of and the attempt to disgrace the sworn agents of the administration who refused to violate their pledge.

4th. The open employment of money in the passage of the Lecompton and English Bills through the Congress of the United States.

5th. The admission of the parties engaged in the work of electioneering those schemes that they received enormous sums for this purpose, and proof in the checks upon which they were paid by an agent of the administration.[3]

6th. The offer to purchase newspapers and newspaper editors by offers of extravagant sums of money,[4]

7th. And finally, the proscription of democrats of high standing who would not support the Lecompton and English Bills".

The certain employment of money, resorted to by a determined administration, has done much ipse facto to discredit the English Bill as a compromise measure.[5]

1-Printed June 16, 1860.

2-Covode Inves. p.6

3-Mr. Wendell admits that he expended between$30,000. and $40,000. ibid. p.8.

4-John W. Forney was offered a contract worth $80,000. if he would by an editorial no larger than a man's hand support the administration policy toward Kansas.

5-See also Wilson's Rise and Fall of Slave Power, p.564;2Rhodes 295.

CONCLUSION.

The South realized its waning power in Congress. The acquisition of Texas and our aggressions upon Mexico, actuated by the economic necessity of Southern expansion, had failed largely of their primal purpose. The South territorially speaking found itself in a cul de sac. Balance of power between the sections was becoming a vain delusive hope. The North conscious of its waxing strength had grown aggressive and the trend of events seemed to indicate that it had given its ultimatum that no more slave states were to be admitted into the Union. This fact together with the natural incompatibility of sectional interest had given rise to a growing sentiment of secession especially among the Gulf states. Then came the possibility of incorproating Kansas in the slave-holding area, and to this issue the South rallied for its supremest effort.

There can be no doubt that the Southern leaders in Congress realized that Kansas could never be a permanent slave state. Climatic as well as economic considerations prevented this. But the Southern secessionists found in the Kansas question an opportunity to ascertain the attitude of the North with respect to Southern expansion and this is the real significance of the impassioned struggle for this Territory. The conservative men of the South who valued the Union, realizing the gravity of the situation, sought to stay the rising tide of secession by bginging Kansas into the Union under Lecompton as an assurance to their constituents who demanded a "sign".

Naturally the pressure of this determined struggle fell heavily upon the President. The administration, conscious of the

of the Southern determination to make a test case of Kansas, kept closely in touch with the promoters of Lecompton. That in a matter of such national importance, a people could be entirely isolated from outside interference, was utterly impossible. From the first the doctrime of popular sovereignty was entirely inadequate, and it was quite natural, therefore, though hardly in accord with the principle of non-intervention, that the administration should have a personal representative on the field. Mr. H.L. Martin, an employee of the Interior Department, was twice despatched to the Territory ostensibly on errands of official business but in reality to be present at the constitutional convention and represent the interests of the administration in the great problems there under discussion. It cannot be shown, nor is it probable that he took from Washington with him a drafted copy of Lecompton; but that he himself was carefully instucted and bore instuctions to prominent members of the convention; that he participated in the deliberations of the convention and that he himself drafted the compromise plan of submission, we have ample proof in his testimony before the Covode Investigation.(1) Perhaps it is significant, too, that Hugh M. Moore, Chairman of the Committee on Slavery, was an intimate friend of Secretary Howell Cobb; that as the delegates faltered and wrangled over the question of submission, Secretary Cobb, himself, repaired to Kansas and was presumably in conference with the pro-slavery leaders of the Territory.(2) But these facts do not prove the existence of a definite administration program. They rather reveal the desire of preventing the commision of a blunder which would quicken rather than quiet the ominous clamors of an impatient

1-Pp.I57-I70.

2-ibid. I67.

South.

The fact of Martim's mission to Kansas which would have been a crowning rebuttal to "non-intervention"- the sweeping and all compwehending defense of the administration- was apparently unknown to the Opposition in the Senate. This statement suggests the observation that both parties in the Senate were not intimately acquainted with the situation in Kansas. The speeches do not disclose an accurate knowledge of the present actual condition in the Territroy. The Northern Senators, apparently did not read the Kansas papers for their data; and from the early desire of the administration and the South to submit Lecompton, it is quite evident that the Southern Senators believed the Free-State element to be in the minority.

While it is quite true that President Buchanon in his sacrifice of Governor Walker, and in his abandonment of submission, lays his official record open to charges even graver than mere inconsistency; yet it is further true that a realization of the tremendous pressure weighing upon him must induce some charity for this unhappy exedutive. The Union was undoubtedly endangered by the intolerant demands of two irreconcilable sections. The North embittered by the gross frauds committed in Kansas under the apparent sanction of the administration, was naturally in no mood to conciliate. The South convinced of an attempt to deprive it of its share of the common territory was in nowise disposed to compromise. To the President the only solution of the vexatious problem appeared in the speedy admission of the Territory under a slave constitution. In this policy he seemed to see proximate success

for the South but ultimate victory for Freedom. Upon this plan,he staked the success of his administration, his political fortunes, and his personal reputation; and History has sadd that he lost.

APPENDIX.

Bills Introduced in the Senate to Admit Kansas.

Dec. I8 th.(1) By Sen. Douglas [SI5] authorizing the people of Kansas to form a constitution preparatory to admission. No speech. -Referred.

Jan. 4th.(2) By Sen. Pugh. S37.

I.- Admits state under Lecompton with boundaries defined in the pacification bill of the last Congress.

A.- Slavery article must be submitted to a separate and direct vote "Yes" or "No",- on April 7,I858 at which State officers, the Legislature, and Congressmen shall be elected. Returns to be made to Governor instead of President of Convention.

B.-2nd. fundamental condition:- Nothing in the convention to limit or impair the right of the people through their legislature at any time to call a convention to alter, amend etc. their form of government subject only to Federal Constitution.(3)

2.- President to admit by proclamation as soon as election of April 7, has transpired.

3.- Ordinance rejected. In its stead the usual articles of compact are offered to the first Legislature for acceptance or rejection.

-Referred.

REsolutions for Information.

Dec.I6.-(4) Jefferson Davis offered resolution: "Resolved that the President be requested to communicate to the Senate all correspondence between the Executive Department and the present Governor of Kansas together with such orders and instructions as have been issued to said Governor in relation to the affairs of said Territory". Amended by Sen. Douglas,-"together with the constitution

2-Sen. Jour. p.65.

3-ibid., p. 175.

3 Provisions of this character in a bill by the Opposition would have been rejected as intolerable intervention.

4-Globe 38.

and schedule referred to in the annual ~~message~~ message".

-Adopted.

Dec. I7.(1)- Sen. Trumbull offered a resolution calling for all correspondence and orders between the President and any of the Departments and the Governor of Kansas and officer or person in the employment of the government there. Sen. Pugh also offered a resolution calling for specific information concerning the election returns, census,&c. and Journal of the Lecompton Convention.

- Resolutions lie over.

Dec. I8.(2)- Sen. Trumbull's resolution passed.

Jan. I8.(3)- Sen. Chandler's resolutions request the Sec. of War to inform the Senate of the number of troops stationed in Kansas since Jan.I,I854.

-Passed.

Feb 4,(4)- Sen. Douglas offered a resolution calling for certain specific information:-

I- Returns and votes for and against convention in Oct. I856.
2- Census and registration for the constitutional convention.
3- Returns of Dec.2I,I857 on the constitution.
4- " " Jan. 4,I858 " " "
5- " " " " " for ticket under Lecompton
6- All correspondence between any Executive Department and Gov. Denver. Authorizes the President to secure information desired in case he does not have it.

-Ordered to lie over.

Feb.8.(5)- Sen. Wilson attatched an amendment to the motion to refer the President's Message, authorizing the Com.of Ters. to secure certain specific information.

-Voted down(28-22).

Feb. I0,(6)- Sen. Douglas brought his motion forward again in which he declares that it is the apparent determination of the Senate to smother investigation as his daily attempt to secure consideration for his resolution has been defeated by postponement.

1-Globe 61.

2-ibid. 64.

3-ibid.314.

4-ibid. 570.

5-ibid. 621.

6-ibid. 643.

Mar.2.[1]- Sen. Douglas tried again without avail to secure the adoption of his resolution.

-Although Sen. Davis' resolutions of Dec.16, were adopted I can find no record of the information required thereby, being submitted. It will be seen that the administration sedulously avoided any approach to a thorough investigation of Kansas affairs such as the House had undertaken. This fact is further aggravated by the refusal of the Senate to accept the House Report as evidence in the various arguments submitted.

Resolutions of the State Legislatures regarding Admission of Kansas under the Lecompton Constitution.

Ohio.

Jan. 27,1858.[2]
Resolutions endorse the administration, reaffirm the Cincinnati platforn, disavow the Lecompton constitution and instruct the Senators and Representatives to vote against admission under it or any other constitution, not directly submitted for popular ratification.

Pugh (Dem.)- Wade (Rep.)

Iowa.

Feb. 4.[3]
Resolutions instruct Senators and Representatives to oppose admission under Lecompton; condemn the President and all others in Congress championing this constitution and request the resignation of its Senators and Representatives if they cannot conscientiously comply with the resolves.

Jones (Dem.)-Harlan (Rep.)

Rhode Island.

Feb. 8.[4]

1-Globe 920.

2-ibid. 428.

3-ibid. 566.

4-ibid. 607

Resolutions instruct Senators and request Representa-9I tives to vote against admission under Lecompton.

Allen (Dem.)- Simmons (Rep)

Michigan.

Feb.I7.(1)

Resolutions instructing Senators and requesting Representatives to use all proper means to prevent the further extension of slavery in the Territory of the United States or the admission of any more slave states into the Union, and to oppose the admission of Kansas under Lecomtpon or any constitution maintaining slavery therein.(2)

Chandler (Rep.)- Stuart (Dem.)

New York.

Mar.24.(3)

Resolved that New York is opposed to admission of Kansas under Lecompton or any other constitution,"which shall not have been in all its parts fairly submitted to the legal voters of the Territory and received their sanction and approval".

Seward(Rep.)- King(Rep.)

Massachusetts.

April I4.-(4)

Resolutions opposed to the admission of Kansas under Lecompton.

Wilson (REp.)- Sumner (Rep.)

Tennessee.

Feb.23.(5)

In the preamble, the resolutions refer to a speech made by Sen. Bell on May 25,I854 on the Kansas- Nebraska Bill, in which he said that he would cheerfully resign whenever his course in Congress was not sustained by his consistency. The Legislature assures him that he is not so sustained in his present attitude toward the Kansas question and instructs the Senators and Representatives to vote for the admission of Kansas under Lecompton. Sen. Bell ex-

1-Globe 735.

2-These instructions were zealously obeyed. Sen. Stuart was one of the most active opponents of Lecompton in the Senate.

3-Globe I294.

4-ibid. I597.

5-ibid. 804.

plaims his position at length and is drawn into a sharp colloquy with his colleague, Andrew Johnson.

Bell (Nat.Am.)- Johnson (Dem.)

Texas.

Mar.9.(1)

Resolutions declare that there is a violent determination on the part of a portion of the people of Kansas to exclude pepple from slaveholding states from a just, equal, and peaceful participation in the enjoyment of common property, which Northern sympathy may make perpetual and the Governor is therefore authorized to order the election of ~~seven~~ seven delegates to meet delegates appointed by the other Southern states in convention, when such a convention is deemed necessary and appropriates $10,000 to pay mileage &c. for such delegates. Should emergency arise in which Texas is warranted in acting alone, provision for such action is made.

Houston (Nat.Am.)- Henderson(Dem)

Maine.

Feb.25.(2)

A long series of resolutions are presented denouncing in violent terms, the present government of Kansas, the attitude of the administration, and the President's Kansas Message. "Resolved- That if that constitution [Lecompton] shall finally be forced upon Kansas against the solemn remonstrance of its people, then, in the opinion of this legislature they shall be justified in resisting it at all hazards, and to the last extremity; and in so righteous a struggle the people of Maine are ready to aid them, both by sympathy and action". The Senators and Representatives are expected to oppose admission under Lecompton.

Fessenden (REP.)- Hamlin (REP.)

California.

April 14.(3)

1. Globe I000.

2. ibid. I32I.

3. ibid. I576.

"Whereas-----the Lecompton constitution and state government so formed is republican, the Senators are instructed and Representatives requested to vote for immediate admission of Kansas".
Gwin (Dem.)- Broderick (Dem.)

Wisconsin.

April 21. (V)
Resolved against the admission of Kansas under Lecompton.
Durkee (Rep.)- Doolittle (Rep.)

Analysis of the Vote.

Democrats instructed to vote against Lecompton.

Pugh of Ohio.

Jones of Iowa.

Allen of Rhode Island.

Stuart of Michigan.

Democrats and Native Americans instructed to vote for Lecompton.

Johnson of Tennessee.

Bell of Tennessee.

Houston of Texas.

Henderson of Texas.

Gwin of California.

Broderick of California.

How they Voted.

The names of those who violated their instructions are underscored.)

On the Senate Bill. (SI6I.)

Against- Bell, Broderick, Pugh, Stuart.

For- Allen, Gwin, Houston, Johnson, Jones.

English Bill.

Against- Broderick, Stuart.

For- Allen, Houston, Johnson, Pugh, Jones.
(N.B. Senators in the list not accounted for in these votes, were

/-Globe I703.

either absent or had paired off.)

Votes by States.
Senate Bill.

For- Deleware, Louisana, North Caolina, Indiana, Missippippi, Alabama, South Carolina, Missouri, Texas, Virginia, Georgia, Arkansas, Maryland, Florida, New Jersey.

Against- Michigan, New Hampshire, Vermont, Connecticutt, Wisconsin Illinois, Maine, New York, Ohio, Massachusetts.

Divided Delegations- Rhode Island, Pennsylvania, California, Iowa, Kentucky, Tennessee.

English Bill.

Result practically the same with the exception that the Ohio vote was split by the defection of Pugh.

--o--

Extract from Sen. Wilson's Speech of March 20, in Reply to Sen. Hammond. (App.167.)

"But the Senator from South Carolina, after crowning cotton as king with power to bring England and all the civilized world 'toppling' down into the yawning gulphs of bankruptcy and ruin, complacently tells the Senate and the trembling subjects of his cotton king that 'the greatest strength of the South arises from the harmony of her political and social institutions';that 'her forms of society are the best in the world'; that 'she has an extent of political freedom, combined with entire security, seen nowhere on earth'. The South, he tells us, 'is satisfied, harmonious, and prosperous', and he asks us if we 'have heard that the ghosts of Mendoza and Torquemada are stalking in the streets of our great cities;that the inquisition is at hand, and there are fearful rumors of consultations for vigilance committees?' Sir, this self-complacency is sublime! No son of the Celestial Empire can approach

the Senator in self-complacency. That 'society the best in the world' where more than three millions of beings, created in the image of God, are held as chattels- sunk from the lofty level of humanity down to the abject condition of unreasoning beasts! That 'society the best in the world' where are manacles, chains, and whips, auction-blocks, prisons, bloodhounds, scourgings, lynchings and burnings, laws to torture the body, shrivel the mind, and debase the soul; where labor is dishonored and laborers despised! 'Political freedom' in a land where woman is imprisoned for teaching little children to read God's Holy Word; where professors are deposed and banished for opposing the extension of slavery; where public men are exiled for quoting in a national convention the words of Jefferson; where voters are mobbed for appearing to vote for free territory; and where book-sellers are driven from the country for selling a copy of that masterly work of genius, 'Uncle Tom's Cabin'! A land of 'certain security', where patrols, costing as in old Virginia, more than is expended to educate her poor children, stalk the country to catch the faintest murmur of discontent; where the bay of the bloodhound never ceases; where but little more than one year ago rose the startling cries of insurrection; and where men, some of them owned by a member of this body were scourged and murdered for suspected insurrection! 'Political freedom' and 'certain security' in a land which demands that seventeen millions of freemen shall stand guard to seize and carry back fleeing bondmen! "

For Discussions of the abstract Question of Slavery, see:-

Hale	Speech of Jan.	20,	Globe 34I.
Harlan	" " "	25	" 385.
Hammond	" " Mar.	4	" 960 et seq.
Chandler	" " "	I2	" I088.
Wade	" " "	I2	" IIII.
Mason	" " "	I5	App. 78 et seq.
Trumbull	" " "	I7	GlobeII59.
Foster	" " "	I9	App. I45.
Simmons	" " "	20	" I60.
Wilson	" " "	20	" I67.

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Obiter Dictu.

Jefferson's hatred of the Supreme Court. See Hale, Globe 320.

A Tribute to Lawrence Kans. See Wilson, Globe 546.

Defense of the Emigrant Aid Society. Wilson, Globe 575.

The United States and Imperialism.

Sen. Trumbull(REP.) disagrees with Sen.Hunter (DEM.) who thought that the United States ought to be free to enter into the acquisition of lands with other powers by the exercise of a vigor- our foreign policy.Sen . Trumbull's reply in the light of modern events is very interesting. Says he: "Sir, I disagree with the Sen- ator from Virginia on that subject. I believe it better, far bet- ter, that we should be at home watching the nest, preserving the ballot-box and our free institutions in their purity, rather than joining with the crowned heads of Europe to seize upon the spoils of Empire upon the Eastern continent and subject to our rule an inferior class of people. God forbid, sir, that republican America shall ever be united in any unholy alliancefor the partition of an- other Poland and the subjugation of its inhabitants".

-Globe II65.