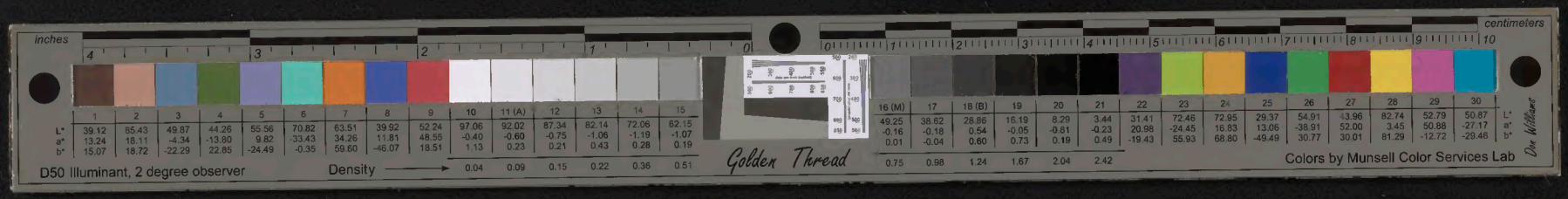

GretagMacbeth™ ColorChecker Color Rendition Chart

Medical Address

LECTURE

DELIVERED BY

SURGEON N. PINKNEY OF THE U. S. NAVY,

IN THE HALL OF THE HOUSE OF DELEGATES,

ON THE EVENING OF THE 13th OF FEBRUARY, 1854.

SUBJECT,*

HOME AND FOREIGN POLICY OF THE GOVERNMENT OF THE UNITED STATES.

* This Lecture is published as delivered before the Maryland Institute on the 13th of last December, with the addition of remarks on the Nebraska Question.

[Annapolis? 1854?]

Alabama Law

All 2d Ty 37

CORRESPONDENCE.

ANNAPOLIS, MD., *February 17th*, 1854.

SURGEON N. PINKNEY, U. S. NAVY:

Dear Sir,

The undersigned members of the Legislature having had the honor of hearing the Lecture which you delivered in the Hall of the House of Delegates, on the evening of the 13th instant; would respectfully request a copy for publication. They are persuaded that the tone of patriotism, and lofty sentiment which pervaded it throughout, must commend itself to the favorable consideration of all who read it.

With great respect,

Your obe't servants,

W. H. GALE,
JOHN F. DENT,
SAM'L H. BERRY,
GEORGE R. DENNIS,
JNO. H. SOTHORON.

NAVAL ACADEMY,
ANNAPOLIS, MD., *February 22d*, 1854.

Gentlemen,

I have received your request for a copy of my Lecture for publication, which I accede to, with a due sense of the honor conferred upon me by the application.

Very respectfully,

Your obe't serv't,

NINIAN PINKNEY.

Messrs.

W. H. GALE,
JOHN F. DENT,
SAM'L H. BERRY,
GEORGE R. DENNIS,
JNO. H. SOTHORON.

LECTURE.

Fellow Citizens,

The subject which I have selected as the topic of discussion this evening, is one of stupendous interest. It is the great national policy at home and abroad; the system which it behooves us to pursue as a power on this earth, in these delicate and difficult relations which we bear to the citizen at home, and the world beyond our own shores. I approach it with no ordinary degree of embarrassment, because the discussion although rich and fruitful, involves so many questions of magnitude, that too much care and circumspection cannot be observed in the endeavour to elucidate it. I feel satisfied that no American can rise before an audience so refined and intelligent, to express his views and exhibit the ground upon which those views are based, without touching a chord of sympathy; and calling into exercise a calm and impartial spirit of investigation, which will at all events secure for him a verdict in strict accordance with the merit of the argument. The day has arrived when each American citizen is made to feel that it is his duty, to study out for himself, the policy that should be pursued, in order that he may intelligently determine, what that policy shall be. The time has passed for apathy and indifference; and each year in its wondrous developements shows more and more conclusively, the importance of clearly marked definitive action. It may sound paradoxical, and it is a strange enigma; that while we have grown with a rapidity that has astounded the world, and multiplied our commerce with the nations around us, we have as yet not fully defined our position, or unveiled our policy to the world;

so that all may read it, and know it for themselves. We cannot with safety, or with honor, or consistency, any longer postpone this clear and definite promulgation. The heart of Europe is even now convulsed; and no man can tell when the torch will be lighted, and the tocsin of a European war sounded. It is not less our duty than our privilege to declare our position; that the world may see where we stand, and how we mean to act.

Before I begin the discussion, it will be useful to pause a moment while I glance at the state of our country, when she was but a colonial dependant on the Government of England. The colonies had a common origin, common rights, a common allegiance. They were all subjects of the British Crown. They had no direct political connection with each other. There was no reciprocal alliance formed between them. They were excluded from all political connection with foreign nations. They had certain rights and prerogatives. Every colonist could if he pleased inhabit any other colony, and trade therewith, and inherit and hold lands. In peace and war their fate and fortune were linked with that of the mother country. They laid claim to exclusive authority to legislate on all subjects of local and internal interest and policy. They acknowledged the power of Parliament to legislate upon their commerce with other nations, and to legislate upon the common interests of the whole. Theoretically the Parliament maintained their right to legislate over them in all cases—practically they interfered but little with them. The Stamp Act of 1765, which asserted the power of internal legislation and taxation, independently of the will of the colonist, led to a controversy. During this controversy, the first Continental Congress in 1774, drew up and adopted a declaration of rights. Life, liberty, and property, they claimed for themselves. They denied that they had forfeited those rights which are essential to freedom, by the mere fact of emigration. It was the violation of these rights which constituted the main ground upon which the revolution was founded.—On the 4th of September, 1774, the great Continental Congress assembled. Such measures as the exigency of the occasion required were adopted. In 1775, it was again convened. Other great measures were adopted which

led to open war. In 1776 the declaration of independence was made unanimously by the people. This Continental Congress, constituted in fact the national government, and conducted the national affairs until the close of the revolution, when the Articles of Confederation were adopted by all the States. So that you will perceive that the revolutionary government closed with the adoption of the Articles of Confederation in 1781. By these Articles of Confederation, Congress were empowered (to use the language of a great writer) "to make and conclude treaties; but could only recommend the observance of them. They could borrow money in their own name on the faith of the nation; but could not pay a dollar. They could coin money; but could not import an ounce of bullion. They could declare war, and determine what number of troops were necessary; but could not raise a dollar to defray its expenses. They could decide everything; but could do nothing." They had no power to regulate commerce with foreign nations, or amongst the several states. This confederative government, weak and imbecile as it was, with neither dignity nor inherent energy enough to secure for itself efficiency at home, nor respect abroad, continued in force until 1788, when the present glorious constitution was adopted. This noble instrument, was attended with vast difficulties at its birth, which it would be well for us to remember; and was not achieved without great sacrifices. It was the work of the people of the several states. It was their sovereign act. In conventions they ratified and confirmed it. Its powers are therefore as sovereign as those of the states. Those who would arrive at an intelligent comprehension of this august instrument, must never lose sight of the fountain head from whence it sprung. We the people; that is the watch word, that indicates at once its true source, and its chief glory. For what purpose was it established? To form a more perfect union—to establish justice—insure domestic tranquility—provide for the common safety—promote the general welfare, and secure for ourselves and posterity the blessings of liberty and equality. These were its grand objects. The means to secure them, must be contained in the instrument, and are contained in it. It would be sadly imperfect if it were not compe-

tent to effect those ends. If invested with ample powers, it must be clothed with the requisite means to carry them into effect. What is a constitution? It is a fundamental regulation, that determines the manner in which the public authority is to be executed. Every power named in it is a fundamental law. Those who are entrusted with the execution of them, cannot change them, without destroying the foundation of their authority. There is a wise provision in our constitution, which points out the mode of amending it, and every such amendment is constitutional. It cannot be amended by a mere act of Congress. Herein is its wisdom. But for this wholesome and salutary check, it would have been torn to tatters. Two modes are prescribed. 2-3ds of both houses of Congress can propose amendments; but before they can take effect they must be ratified by the legislatures of 3-4ths of the states.—Or on the application of the legislatures of 3-4ths of the several states, Congress shall call a convention for proposing amendments, which must be ratified by conventions in 3-4ths thereof. There is however one of the rights, which is vouchsafed to each state by the constitution, which is not susceptible of any change or amendment whatever, except on the consent of the state itself. For the constitution expressly declares, "that no state, without its consent, shall be deprived of its equal suffrage in the senate." The constitution in its other powers may be amended in the ways mentioned above. It may be altered upon the terms therein prescribed. But in this particular, it has itself, repudiated change without the express consent of the state. Her right to equal suffrage in the senate is a constitutional right secured to her by the compact, and no power in the general government or the states, can reach it unless with the consent of the state, whose equality of suffrage in the senate is to be affected. This is no reserved right—it is a part of the compact; to touch it would be a breach of the compact, and the state would be absolved by its infringement. It is our policy to meddle as little as possible with this instrument. Stability is its great strength. The men who framed it were as wise if not wiser than the men of our day. The very restraints thrown by them over the spirit of change, which is

always productive of evil, are a tower of defence. The constitution stands out like a rock; firm and secure, and offers to each and all a safe anchorage, as the vessel of state pursues her successful voyage and gallantly bears on her course. Let it stand. Cherish it in all its features. You may easily destroy and lay waste. You cannot as easily restore. The amendments that have been engrafted, were all of them adopted in 1804, and singular to state, they were all of them suggested by several of the state conventions, at the time the constitution was itself before the people. Since then, it has been found adequate and ample, for the guardianship of all our rights, and the supply of all our wants. The wise and the patriotic would ever desire, that it should remain the pledge of our future greatness, happiness, security and peace, as it was the fruit of the largest compromise of conflicting views, and opinions, ever before made for the common benefit. In casting my eyes over the field I have selected for comment and reflection, it seems but natural that I should begin at home; and show what policy the government should pursue in reference to those duties and interests, that are bound up in the welfare and prosperity of the states—and first, it seems most appropriate that I should turn my attention to that peculiar institution, which has been made the bone of most bitter controversy to the sad disturbance of our peace. It becomes us to treat it with the bold independence and firmness it demands. The North and the South have an equal interest in the settlement of this vexed question, and I have totally misconceived the subject, if it is not as clearly and incontrovertably established by the plainest provisions of the constitution.

Have the states a right to hold slaves? I assert they have, because nowhere in the constitution is this right denied to them, and nowhere, is the power to interfere with it, granted to Congress.

Section 9, Article 1, clause 1. "The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808, but a tax or duty may be imposed on such importation, not exceeding $10 for each person."

Here is an express grant to import slaves, for it is of slaves that this clause of the constitution treats—a condition is imposed, and any interference on the part of Congress prohibited up to a definite and prescribed period. It is made property by the taxation imposed, and the party importing, has the sole right to the use of the service of such persons. This right of importation up to 1808, is actually protected by an express provision. "Art. 5. Provided that no amendment which may be made prior to the year 1808, shall in any manner affect the 1st clause in the 9th Section of Article 1st." It is manifest that the guarantee of the right to import slaves was one of the compromises between the slave and non-slave holding states. The very guarantee is a virtual recognition of the right of slavery in the states. The power authorizing the importation of slaves exists—and the necessary power to carry it into execution also exists as appears by " Art. 1, Sect. 8, clause 18. To make all laws which shall be necessary and proper for carrying into execution the foregoing power, and all other powers vested by this constitution in the government of the United States or in any Department."

The privilege of holding slaves being established, with the additional privilege of importing up to 1808, a question of great importance arises. Suppose the slave escapes into another state (a non slave holding state for instance) does the right to recover the property exist in the owner? It unquestionably does. The constitution is clear on this point " Art. 4, Sec. 2, clause 3. No person held to service or labor in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such labor or service, but shall be *delivered up on claim of the party to whom such service or labor* may be due." Here then it is expressly denied to the states, to make any law or regulation, which shall enable them to discharge a person held to service or labor in another state, escaping into their own. Laws made by them individually, contrary to this provision in the constitution, are unconstitutional, and hence null and void. Acts of Congress adverse to it would be equally unconstitutional and inoperative—for the very best of reasons, that it is not delegated to that body even to make laws

declaring the existence of the right. The fundamental law itself expressly declares the right, and it only remains with Congress to enforce it. But it is asserted that slaves are not alluded to in this clause, that makes the delivery up by the state a duty. That this clause refers to such as have committed crimes. This can be proved not to be the case. For "Art. 4, Sec. 2, reads thus. A person charged in any state with treason, felony or *other crime*, who shall flee from justice, and be found in another state, shall on the demand of the Executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime." Here the delivery is to be made by the Executive authority to the state having jurisdiction. In the other case, it is expressly declared to be the duty of the state to deliver up to the *prrty to whom such service or labor may be due.* The clauses are as wide apart as the poles. They do not refer to the same class of persons at all. Crime in the one case was the thing to be redressed, and the redress was to be obtained by the state which had been made the refuge of the culprit. Loss of labor, loss of property, was the thing to be redressed in the other case. And the redress is to be obtained by Congress, from the authorities of the state where the *fugitive from labor*, not crime, may be found, and no law of that state can discharge the fugitive from his just obligation or prevent his surrender. This then is proof conclusive, that it does not allude to those who have committed crime. The remedy is different and the process of sueing out that remedy. The reference is clearly to those who are held to service or labor, and who are they but slaves? The right of importation, with the liability to taxation, gave the party importing, an indisputable property in the importation. The right of property gives as an irresistable consequence, the right to use and appropriate it. The government not imposing the tax of $10, does not alter the right. Her failure to exercise it, cannot invalidate the claim. Her not taxing the property by no means prevented the importation of it—because the importation is not made dependent upon it. She could exercise it or not as she deemed proper. This is clear by the terms of the grant. It has been shown then that the right to recover is

vested in Congress. In Congress lies the power and in good faith it is her duty to exercise it. Congress by virtue of this vested power, have enacted laws requiring the states to deliver up such persons who are held to service or labor. Can the states refuse to comply with the laws enacted? Certainly not—for all the officers in the state government are under oath to support the constitution. How then can they place themselves in antagonism to acts of Congress, without a violation of their oath. The right to enforce the recovery of the slave is placed in Congress. The right to interpose a barrier is denied to the states. How then can they regard themselves as having any authority in the matter? Where do they derive it from? Certainly not from the constitution. Where else could they derive it? Was it a reserved right which they never parted with? No—for it is a right vested in the constitution. It is a right prohibited to them—placed beyond their control. If then Congress exercises this constitutional right, it is the duty of the Government to enforce it. It was a right accruing from one of the compromises of the constitution, and it is a right which no state can give up without a sacrifice of principle. The constitution is the only compromise upon the subject that should be known to the American people.

Story says, "Disobedience to the laws of the Union must be submitted to by the government, to its own disgrace, or those laws must be enforced by arms."

If the citizens of the slave-holding states have a right to the recovery of their slaves, and no state has a right to discharge them, or refuse to deliver them up. If Congress enacts laws by virtue of its constitutional authority, enforcing said delivery, and the states refuse, where lies the prospect of their being recovered? It would be a perfect mockery of the vested sacred rights of the citizens, if the government did not enforce its own laws.

Look at Amendment Art. X. "The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or the people."

This places the whole matter beyond the states. Here is a power delegated to the United States—do doubt about it. The power to interfere or enact laws in opposition to it, is expressly

prohibited. Apply the spirit and letter of this amendment to the case in hand, and the inference is plain. The right to recover the slave, and the corresponding obligation of government to enforce it.

The next subject which I shall discuss, is whether Congress has the power to establish roads, and if so have the states any right to oppose the construction of them through the state territory? This is a very important subject, and the views of our statesmen are very conflicting upon this, as well as that of internal improvement generally.

Art. 1, Sect. 8, clause 7. "Congress shall have power to establish post roads and post offices." This power is considered to extend to the construction of roads in the territories only, and not within the states. This is maintained on the assumption, that it was necessary as a means of defence. This is strange doctrine indeed. It is admitted that Congress has the power to construct roads in the territories, but not within the states. Why in the territory? Because it is assumed to be necessary as a means of defence. Why not within the states? Because it would be an interference with their rights and jurisdiction. If it be maintained that we do not find the power even of constructing roads under this section, it is to be found elsewhere in the constitution. Sect. 8, Art. 1, clause 1. "To provide for the common defence and general welfare of the United States." Both these powers authorize Congress to establish roads. Establish when? At such time as Congress may deem fit. Establish where? Not in the territories or states, (for no mention is made of either, in direct terms or by implication,) but where Congress shall think fit. They are special grants—in no way qualified. Construct roads when they deem it necessary—through the territory and the states as they may think fit. This is what the constitution in spirit and letter says to Congress. Congress are not compelled to construct roads at any specified time, and they may defer it, until in their judgment the common defence, and general welfare of the United States demand it.

Being enumerated powers delegated by the constitution, the Congress have a right to carry them into effect, without even waiting for this crisis. Suppose in virtue of those powers the Congress should appropriate money for the construction of roads through the territories and the states; could the states object? Does not the power extend to the country? Now what is the country; but the whole of the territory covered by the flag, and subject to the laws? If the states can say that Congress have no power to construct roads within their domain, then the powers thus granted to Congress would be of no avail. Assume that the government is bound to ask the consent of the several states for the construction of roads within their limits; the states would possess the unqualified right to assent, or refuse, as they might deem fit. Admit this to be a state right, and in the event of the common defence of the Union demanding the construction of such roads, still the government could not enforce it. To assume this would be absolute absurdity, and yet to uphold this doctrine of state rights, it must be assumed or else the power clearly belongs to Congress. But the powers to construct roads—to provide for the general welfare and common defence are expressly granted to Congress as I have shown; and is it not sound doctrine that a power granted to Congress, and when exercised by it, cannot be obstructed in its execution, by the states. If this be not true, it would be no power at all.

In fine it is a right vested in the constitution, and by it delegated to Congress, and it is the duty and policy of that body to exercise it, and for the government to carry it into execution.

The clearing out of harbors and the removal of obstructions from our navigable rivers, is a grand scheme of internal improvement, in which the people of the states have a deep and vital interest, and by which they would be advanced in general prosperity. The utility of the measure, will not admit of debate. The benefits that would accrue from the energetic and vigorous execution of the work, are too manifest and wide spread, to be called in question. The only question that has been, or can be debated,

is whether the General Government have the power to do it. The policy of the measure is self-evident.

It is denied that the power exists in the General Government. I would ask why does it not exist? Does not the General Government regulate commerce with foreign nations, and among the states? Is not the preference by any regulation of commerce or revenue, denied to the ports of one state over those of another? Cannot vessels bound to or from one state to another enter, and clear the port, without paying duties? Are not the states denied the right of laying imposts or duties, on imports and exports, except those, which are necessary for executing its inspection law? And in such cases, do not the net proceeds go for the use of the Treasury of the General Government? If all this be true, and of which there is no doubt—because they are powers expressly denied to the states by the constitution, it would seem but just, that the General Government being the sole enjoyer of all the revenue benefits, accruing from the removal of such obstructions, should bear at least a part of the burden. Is it not necessary for the national defence and general welfare, that the rivers be kept in a navigable condition, and the harbors cleared out; and if so, have not Congress ample power to pass laws, appropriating the means for the accomplishment of the end? And should they not exercise the power? Why are the states in their individual capacity expected by the General Government to carry out this important project of internal improvement, when they are not more interested in it, than the General Government? Suppose the states were to neglect it altogether, would it not be the duty of Congress to have it done? Certainly it would. Why then should they not assist in this great measure? They acting for the general welfare and defence—the states for their individual benefit. It should be the work of mutual co-operation, combined and connected action. It seems to me, to follow as an inevitable consequence upon the power vested in Congress, in express terms, to provide for the common defence, and general welfare of the United States; and to regulate commerce with foreign nations and among the states; and to establish post roads and post offices: and the further power of making such laws as

shall be necessary for carrying into execution those powers, that it is not only expedient, but incumbent on Congress, to remove all such obstructions, which as long as they exist, must interrupt commerce between the states and put in jeopardy the general welfare, and common defence. Should the Congress be opposed to a direct appropriation from the Treasury, though they possess ample power, and abundant means at their disposal; they have it still within their provision, to assist the states in the great enterprise of internal improvement. Article 1st, Section 10, clause 3d, confers the power. "No state shall, without the consent of Congress, lay any duty of tonnage, &c., unless actually invaded, or in such imminent danger as will not admit of delay."

Thus you perceive, that though this power is denied to the states until a certain crisis arises; yet the Congress is in no way restricted. Their consent is merely necessary, and consequently it remains with that body to grant it, whenever they may deem it expedient. The expediency does exist, and unless they grant this privilege, they fail to discharge their duty to the country, whose interests are placed in their keeping.

This nation ought to be commercially, industrially, as well as politically independent of other nations. I do not mean absolutely independent, for that would superinduce barbarism; and be at war with the wise order of Providence, which has linked the whole human family together in sympathy and mutual interest,—but independent in all that is essential to national preservation and existence. A nation's dependence in the sense above mentioned, may be said to be the means of its own truest independence. The resources within herself may become too great—she may have it in her power to send into the field at a moment's warning thousands of troops; well clothed, thoroughly equipped and well provisioned, and maintain them in a war, without experiencing any of the disasters that would befall those who are not possessed of like inherent powers of self-support. This would tend to make her bellicose, and inflame her lust of power, and deaden her perceptions of right; and as war is the great curse of

nations, the sure destroyer of those who are most greedy to satiate their thirst for blood and plunder; it may be safely argued, that such a state of independence as cuts up by the roots, all the sweeter sympathies and charities of life, and panders self-pride, and fires the thirst of ill-gotten gain, will become the sure precurser of the worst sort of dependence, and ultimately work its own destruction by forging chains of its own bondage. To be thus independent would be a national scourge. There is therefore a beautiful dependence of nation upon nation, country upon country, and far be it from me to advocate any doctrine, which would tend to sever that chord which Providence wove, and man should sacredly guard. But still a certain sort of independence is desirable, aye, indispensably necessary, and this consists in the general development of all the industry of a nation. This it is which constitutes in reality, the true source of wealth and prosperity. It is clearly our duty and policy to guard and cherish our great national interests. We are rich in soil and climate. We abound in vegetable and mineral productions. Agriculture, commerce and manufacture must be made to flourish and land must rise in value. We ought therefore to encourage labor, animate industry, excite abilities, so that every one may secure the comforts of life, by his own active energies and well directed industry. Of all these interests, agriculture is the most important; and why? Because from it, the government derives its subsistence.

Commerce is next in importance. By it we are enabled to procure those commodities we stand in need of, which cannot be found at home. This is made up of foreign and home trade. The first enables us to procure such things as neither nature nor art can furnish. Properly equalized it becomes the source of wealth and plenty. By the latter, the riches of the nation are increased. Revenue is necessary—its means depend chiefly on duties. This calls up that most vexed and difficult of all questions in reference to our internal policy. To what extent shall we tax the agricultural interests, with a view of affording adequate protection to the manufacturing classes? They should be fostered by protection, sufficient to enable them to compete with the cheap labor of other countries, and this protection should be continued,

until they have the strength of manhood and then be left to take care of themselves. It would be wrong, a gross wrong, to keep up this protection, after this had been effected; by continuing to tax the agriculturists. In extending this protection it is impossible to lay down any abstract principle. You must apply the remedies to the particular cases as they arise. The great principle to be kept in view, is to tax those articles which we are capable of producing, and which it is the interest of the nation to protect, with a discrimination to such protection. In calculating the protection laid by duties, we must not lose sight of that which is rendered by the expense of importation. We often hear it said that we import more than we export, and the consequence will be ruinous. There must be some mistake in relation to this matter, or how could the states avoid utter bankruptcy and ruin. It may be true—our importation may exceed by millions our exportation, and the erroneous impression is drawn from calculating the value of the articles exported, and not the amount they sold for in foreign markets. True, our states have been greatly involved in debt, from which they are rapidly recovering. Repudiation is now being generally scorned, and the faith of the states being redeemed. But excess of importation did not bring them into debt; it was money borrowed to do that which the General Government should have done. It was done for internal improvement.

The "ad valorem" system is defective. That it is unconstitutional in its operations, admits not of a doubt; and that it leads to great abuses and frauds is equally true. Art. 1, Sec. 8, clause 1. "Congress shall have power, to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; *but all duties, imposts and excises shall be uniform throughout the United States.*" The "ad valorem" system operates unequally, and hence, is in direct conflict with the spirit and letter of the constitution. To remedy this evil why not resort to specific duties?

The reserved rights of the states, can they be abolished by amendment of the constitution?

The states yielded up a portion of their original sovereign powers—to form the Federal Government. Those rights not yielded up are called the reserved rights. In amendment Article 10, you will find those rights fully recognized. "The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people."

By Article 5, of the constitution it is declared. "That amendments shall be valid to all intents and purposes, as part of this constitution."

The reserved rights then, being as I have just shown recognized by a grant of the constitution; and since that instrument can be altered in all its features, *but one*; it follows that the constitution *constitutionally amended* can reach any, and all of the reserved rights; slavery being a reserved right can therefore be abolished by amendment; but it would be a violation of the compromise, and a breach of good faith, and the consequences would be disastrous if not fatal to the Union.

In turning to what I would designate the foreign policy, which is every year assuming a more and more important and imposing aspect, it will be advisable to glance at the case which has already occupied a large share of the public attention, and called forth a great deal of able and eloquent discussion. True, that case is at rest. It has been practically settled by the permission of the return of Koszta to the United States. But the principles that are involved in it have not lost their interest; and as I hold that the future well being of our country is, in a great degree, dependent upon the calm and deliberate judgment which the people of the country pronounce; and as I further hold that the ground taken by our constituted authorities is still a fair subject of criticism, I propose to present the views I entertain, claiming for them only the consideration they merit. Precedents are dangerous things, unless they be wise and judicious. What has occurred may occur

again, and it becomes us to lay down our policy, and settle the principles upon which we construe our obligations of the other independent powers of the earth towards us, and our citizens abroad.

The circumstances connected with this case involve, as I have stated, principles of vital concernment to this nation. The policy adopted, fixes for all after time the future course of this government, from which there can be no retreat. In my judgment, it is the most responsible question which has ever been presented for adjudication. Hence the necessity for a grave and dispassionate review of all the merits.—There is no room for the indulgence of false sympathy. Discard all ulterior ends of political advancement. Let the law of nations, in their honest interpretation, and the fundamental law of this land, be the guiding rule of judgment. The facts of the case have been already unfolded to the view of the American people by the correspondence of the Austrian Minister and our distinguished Secretary of State. To recapitulate facts already known would be unnecessary; I shall therefore proceed to the discussion of them.

The first question to be discussed is, was Martin Koszta a subject of Austria? Most assuredly not; for the moment his banishment took place from Turkey, by consent and in virtue of treaty stipulations between that government and Austria, Austria lost all authority over him. Let us examine why a banished man is placed beyond the control of his country.

Vattel says: "If an exile or banished man had his settlement in his own country, he is exiled or banished from his country. By being exiled, he does not forfeit the human character, nor consequently the right to dwell somewhere on earth. This right he brings with him into the world at the moment of his birth."

Thus, then, if Austria herself banished him, she can no longer claim any authority over him; for, says Vattel, "When the nation excludes one of its members by a perpetual banishment, it can no longer claim any authority over him."

Austria may say, however, that she did not banish him, but that he fled from her jurisdiction. This may be true, in point of fact, yet it does not alter the merits of the case; for, says Vattel,

"Common usage applies also the term exile, and banishment, to the expulsion of a foreigner, who is driven from a country where he had no settlement, and to which he is either for a limited time, or forever, prohibited to return." This was Koszta's case. He had no settlement in Turkey.—He was prohibited from having any; for, by existing treaties with Austria, says Lord Palmerston, "the utmost that could be demanded would be, that they (the refugees) should not be allowed to reside permanently in the Turkish empire." It is clear that this right was, to the utmost extent, pressed and carried into effect by Austria, as is shown by the act of Turkey, and admitted by Mr. Hulsemann. This, then, makes the act of Turkey the act of Austria, and it is the same, to all intents and purposes, as if Austria had actually banished him from her dominions. Thus, then, on the score of banishment, Austria forfeited all authority over Koszta, no matter what were the character and nature of her municipal laws.

Even if no treaty stipulation existed, the fact that Turkey banished him, at a time when Austria was calling for his extradition, and that failing, gave her consent, proves that the banishment was accepted as a substitute. It is plain, therefore, that his banishment must be regarded as the act of Austria. But even if he had not been banished, there is another ground upon which the claim of Austria over Koszta was forfeited.

By a decree of the Emperor of Austria in 1832, "Austrian subjects leaving the dominions of the Emperor, without permission of the magistrate and a release of Austrian citizenship, and with an intention never to return, become unlawful emigrants and lose all their civil and political rights at home." This is expatriation. The right of dwelling in his native country was denied. It was the severest punishment that could possibly have been inflicted. It was in fact a severance of all allegiance by the act of the government of which he was a subject. Why? Because men inherit from nature a perfect liberty and independence, of which they cannot be deprived without their own consent. It is true they do not enjoy them fully when in civil society, because they have made a partial surrender of them to the sovereign. The entire nation, which is but the united will of the citizens, remains subject to the

laws of nature, and is bound to respect them in all her proceedings. What is the end or object of civil society? To procure for the citizens whatever they stand in need of for the necessities, accommodations and conveniencies of life; and in general, for whatever constitutes happiness, together with the peaceful possession of property, and a sure guarantee of obtaining justice with security. In the act of this very association, each individual enters into engagements with all to promote the general welfare; and all have entered into engagements with each individual to facilitate for him the means of supplying his necessity, and to protect and defend him. The nation is bound to fulfil her part of the compact. It is her bounden duty under the sanction of the necessary law of nations, and it is immutable. Why is it immutable? Because it is the law of nature as applied to states. Deprive a man of these rights, and the nation fails to discharge its obligations towards him. Now what is the nature of the rights of which Koszta, by this decree, was to be deprived? They were the rights which arise under the political and civil laws. What are the political laws? Vattel says: "They are the laws made directly with a view of the public welfare." The civil laws, says the same writer, "are those that regulate the rights and conduct of the citizens among themselves." Now what are laws? Vattel defines them as "regulations established by public authority to be observed in society."

Apply these principles to Austria. Mr. Hulsemann says: "The laws of his country are opposed to Koszta's breaking asunder of his own accord, without having obtained permission to expatriate himself from the authorities of that country, the ties of nationality which bind him to it." No one will for a moment deny the right of Austria to make such laws. But of her own accord she has revoked them by her decree of 1832.—She herein made the violation of this law expatriation, and imposed a penalty, which was the forfeiture of "all civil and political rights." Any subject of her's, who is willing to incur this penalty, can leave her dominions. For she admits the right of expatriation. If, therefore, she imposes a penalty, which is equivalent to the deprivation of liberty and independence, and what is that but the deprivation of

all civil and political rights? Does she not deprive him of what the immutable law of nations declares to be his lawful rights? Had Koszta returned, would he not have incurred this penalty; and if so, would he not have given up the rights of which he could not be deprived but of his own consent. This he could not be compelled to do, and consequently he had a right to settle wherever he thought proper, and in the exercise of this right Austria could have no authority to interpose an obstacle. Every principle of the law of nations sustains this doctrine. Thus, then, on this ground, she forfeited all authority over Koszta.

Austria claims jurisdiction over him on the score of existing treaty stipulations with Turkey. There is no proof of the existence of such treaty, as was shown by the refusal of Turkey to surrender him on demand, and the submission of Austria to such refusal. More than this, there is direct proof that Austria never dreamed of the existence of such a treaty, because Mr. Marsh, our Minister of Foreign Affairs, states that Ali Pacha, Governor of Smyrna, imformed him that a few years since the Austrian government refused to surrender to the Porte Turkish rebels who had fled into Austria, on the ground that the *treaties did not provide for the extradition of political offenders.* It is then a settled fact, that Austria could have had no right by virtue of treaty stipulation. Let us see then if by international law she can set up a claim, and if so, is the government where the rebel or political offender has sought refuge bound to surrender him on demand. This brings up the question how far one government is bound, by the law of nations, independently of treaty stipulations, to surrender, upon demand, fugitives from justice, who having committed crimes in one country, flee to another for shelter:

Judge Story expressed great doubts whether upon principles of international law, independently of statute or treaty, any court of justice is authorized to surrender a fugitive from justice.

In 1821 the then Attorney of the United States declared that the modern usage and practice of nations had been contrary to the doctrines of the early jurists; and that it was not now the law and usage of nations, to deliver up fugitives from justice, whatever may be the nature or atrocity of their crime, unless it be in pursuance of a treaty stipulation.

In the case of the Creole, the high law authorities in Westminster Hall gave their opinion in the British House of Lords, in 1842, that the English law and international law did not authorise the surrender of fugitive criminals of any degree; and that the right to demand such surrender must be founded on treaty, or it did not exist at all.

Kent says, that it is the duty of the government to surrender up fugitives on demand, after the civil magistrate shall have ascertained the existence of reasonable grounds for the charge, and sufficient to put the accused upon his trial. The class of offences to which it is understood to apply, are only to crimes of great atrocity, or deeply affecting the public safety. Writers on international law, it will be borne in mind, confine these offences to pirates—incendiaries—assassins. Koszta was not accused of any other than a political offence, and it is clear from the above authorities, that he could be demanded only on this ground. No nation, with a proper sense of humanity, would give him up, unless by treaty stipulation. Such treaty stipulation had no existence in this case, save in the teeming fancy of Austrian despotism, and long cherished Austrian malignity. These points settled, Austria had not the shade of the shadow of a claim upon Koszta.

We come now to consider whether Austria had any right to seize in a neutral territory Martin Koszta, and by force place him in confinement on board one of her national vessels. This right she claims by virtue of treaty stipulation, which has been shown to be without foundation. This is the wildest chimera that ever floated in the brain of a nation that lays claim to having paid the least respect to the rights of others, and vauntingly demands justice at their hands. Supposing treaty stipulation to have existed, (which is false in fact,) this would have authorised a legitimate demand upon Turkey for his surrender, but never her violent and disingenuous attempt to seize him for herself and transport him to her dominions. Throwing herself upon existing treaty stipulation, did it not occur to her that the remedy was the surrender by Turkey of the alleged refugee, and not her forcible assertion of her supposed claims, without the consent of Turkey, on her own soil and within her own dominions? I allude to this because it

seems to be Austria's own condemnation upon her own avowed and professed principles of law and justice. But there was no such treaty, and she must therefore show her authority in seizing Koszta at Smyrna, without the consent of Turkey, as recognized in the law of nations and thereby sanctioned.

What says the law of nations upon this subject? Neutral territory is inviolable. It is not lawful to make neutral territory the scene of hostility, or to attack an enemy while within it; and if the enemy be attacked, or any capture made under neutral protection, the neutral is bound to redress the injury and effect restitution. In 1793 the British ship Grange was captured in Delaware Bay, by a French frigate, and upon due complaint the American government caused the British ship to be promptly restored. No act of hostility is to be commenced on neutral ground—no measure is to be taken that will lead to immediate violence.

Austria, without doubt, violated this sacred law of nations, by seizing in a neutral port Koszta, over whom she had no more authority than she had over a subject of Turkey. The facts incontestibly sustain this view. It matters not whether he had settled elsewhere—her authority over him had long ceased. Her conduct is therefore to be regarded as a flagrant violation of the law of nations, and any nation had a right if she thought fit to *intervene*, to prevent an outrage inconsistent with the common principles of humanity. Her conduct was but little better than that of a pirate, and she has placed herself in a position to be rebuked and punished by the family of nations. After having illegally seized Koszta—after having trampled under foot that great principle of international law, which proclaims that neutrality is inviolable—after having disregarded in fact every high-toned principle as a nation—she unblushingly demands of the United States the surrender of Koszta, and the disavowal of its agents—demands that they should be called to a severe account—demands, in a word, ample satisfaction proportionate to the magnitude of what Mr. Hulsemann calls the outrage. Where lies her authority to make this demand? Where are to be found the grounds for the monstrous claim? With Austria we have nothing to do in the way of apologies. Independent of the violation of neutral territory, she

was guilty of a breach of solemn engagement to let the matter remain as it was, until the government of the United States could be heard in behalf of Koszta, by determining to take him away clandestinely.

If any nation has a right to demand satisfaction of us, it is Turkey. But Turkey does not complain. Austria calls upon the European governments to hold us to accountability for our violation of neutral territory. Ye governments of the old world, give good heed to this vaunted appeal to your sympathy and concurrence. But before ye take the step proposed, it will be well to inquire into the conduct of one, who exhibits this keen sensitiveness at the perpetration of wrong, and the trampling under foot the holy neutrality of nations. You must close your eyes upon the most flagrant breach of neutrality that has met the gaze of modern times, and shut out of view the impotent fury of a vindictive spirit, that was not satisfied with expatriating a former citizen, sending him forth to find a shelter and a home where he could; but sought to glut its vengeance by a sort of kidnapping, which, when brought to the light, and menaced with resistance, deemed it safer and wiser to desist, than to persevere in its fell purpose. Austria, the despiser of the neutrality of Turkey, calling upon you to stand and rebuke us, is indeed a picture of self-stultification not often displayed to the gaze of the world.

As to the governments of Europe calling us to account, Austria will find it a matter of mere speculation. They must come with clean hands into court. What naval power entered the neutral territory of Denmark, and captured a whole fleet in the harbor of Copenhagen? What naval power in the neutral territory of Chili, in the harbor of Valparaiso, violated neutrality? It was England. Has not France done the same? In fact what nation of Europe has not more or less trampled under foot, this most sacred of all international law? There is little sympathy to be expected from the other powers of Europe by Austria; but if any thing was attempted, she herself would be entitled to a rich portion.

We come now to examine the most difficult and complicated of all the questions involved in this momentous affair, viz: Had Koszta a right to the protection of the United States, and was it

the duty of this government to extend it? This is the great question after all.

"Our Secretary of State asserts that Koszta, when he was seized and imprisoned at Smyrna, had the national character of an American; and that the government of the United States had a right to extend protection over him. He does not however contend that the initiatory step of naturalization invested him with all the civil rights of an American citizen; but it is in his opinion sufficient for all the purposes of this case, to show that he was clothed with an American nationality, and in virtue thereof, the government of the United States was authorised to extend to him its protection at home and abroad. He contends that a nation is not restricted to the extension of its protection only to native born or naturalized citizens. This he says is the doctrine of international law. This law, he further contends, gives the national character of the country, not only to native born and naturalized citizens, but to all residents in it, who are there with or even without an intention to become citizens, provided they have a domicil therein; and that it is a maxim of international law that domicil confers a national character. If a person goes from this country abroad, with the nationality of the United States, this law, (international law,) says our Secretary, imposes upon other nations the obligation to respect him, and entitles him to their protection as an American citizen."

Now, according to the law of nations, all orders of people throughout the whole extent of a country may be divided and are divided into three classes.

1st class—Citizens. Who are they?

"They are members of the civil society—bound to this society by certain duties, and subject to its authority, they equally participate in its advantages."

2d class—Inhabitants. Who are they?

"They are those who reside in a country where they are not citizens."

3d class—Sojourners. Who are they?

"They are strangers who pass or sojourn in a country for the management of their affairs, or in quality of mere travellers."

Let us see whether the state is bound to protect the citizens, inhabitants and sojourners. The law of nations is clear upon this point.

In the case of an inhabitant "bound to the society by the residence, they are subject to the laws of the state, while they reside in it; and they are obliged to defend it because it grants them protection, though they do not participate in all the rights of citizens."

In the case of a sojourner: "In those countries which every foreigner may freely enter, the sovereign is supposed to allow him access only upon this tacit condition, that he is subject to the laws. I mean the general laws made to maintain good order, and which have no relation to the title of citizens, or of subject of the state. The public safety, the rights of the nation, or of the Prince, necessarily require this condition, and the foreigner tacitly submits to it, as soon as he enters the country, as he cannot presume that he has access upon any other footing. The sovereignty is the right to command in the whole country; and the laws are not simply confined to regulating the conduct of the citizens toward each other, but also determines what is to be observed by all orders of people throughout the whole extent of the state."

Now, "in virtue of this submission, foreigners who commit faults are to be punished according to the laws of the country. The object of punishment is to cause the laws to be respected, and to maintain order and safety. The sovereign ought not to grant an entrance into his state for the purpose of drawing foreigners into a snare; as soon as he admits them, he engages to protect them *as his own* subjects, and to afford them perfect security as far as depends on him. Accordingly we see, that every sovereign who has given an asylum to a foreigner, considers himself no less affected by an injury done to the latter, than he would by an act of violence committed on his own subject. For the protection granted to him and the other advantages he enjoys, the foreigner ought not to content himself with barely respecting the laws of the country; he ought to assist it upon occasion, and contribute to its defence, as far as is consistent with his duty as a citizen of another state. He cannot, indeed, be subject to those

burdens that have only a relation to the quality of citizen; but he ought to bear his share of all the others. Being exempt from serving in the militia, and from paying those taxes destined for the support of the rights of the nation, he will pay the duties imposed upon provisions and merchandise, &c."

In the case of a citizen: "Whoever uses a citizen ill, indirectly offends the state, which is bound to protect the citizen; and the sovereign of the latter should avenge his wrongs, punish the aggressor, and if possible, oblige him to make full reparation; since otherwise the citizen would not obtain the great end of the civil association, which is safety."

I have demonstrated by clear terms of the law of nations, and that too upon the high authority of Vattel, and others, that every nation owes protection to its citizens, inhabitants and sojourners, whilst within its territory.

We will now consider whether a nation is bound to protect her citizens, when sojourning in other countries. This is manifestly a duty which she owes to each and every one of *her citizens*, by reason of the reciprocal obligation subsisting between them, "allegiance and protection." This duty on the part of the nation, and the right to demand it on the part of the citizen, reposes on international and national law. Why does it repose on both of these laws? The reason is obvious. No law of nations could make it obligatory on the part of any nation to admit foreigners; all it can do is to declare what are the rights to be enjoyed by such foreigners when admitted, as recognized by the family of nations. It could not force a nation to protect beyond her own territory, the resident or sojourner. For this protection rests solely upon the right, as established by the fundamental law of such nation. This right is yielded solely by virtue of the family compact. In the case of a citizen it is different. Here both the international and national law agree upon this point. For, says the laws of nations, "The sovereign ought to revenge the injuries of the state, and to protect the citizens." It further says: "Every citizen is bound to serve and defend the state as far as he is capable. Society cannot otherwise be maintained; and this concurrence is one of the principal objects of every political association."

With a view of testing the question as to whether the state is bound to protect other than its own citizens when abroad, we will suppose a case. A body of residents or sojourners go from this country abroad, and offend another nation or its citizens; would this government be held to accountability for the offence? and if so, and redress were refused, could she be regarded as approving or ratifying their acts? If they were her citizens, most assuredly she could be held accountable, and if she refused redress, would be guilty of connivance. Not being citizens—owing her no allegiance and not being entitled to protection, she would admit no such claim. In the case of residents who had taken the initiatory step in the process of naturalization, the same would hold equally good. Not sworn to support the constitution, and hence owing her no allegiance, no protection could be demanded. Let us take another case. Suppose a resident, or non-naturalized citizen should go into Turkey, and a war should break out between that government and this whilst he was there, could he be regarded by that government as an enemy? If sworn to support our constitution he would be, and why would he not be an enemy? "Enemies continue such wherever they may happen to be. The place of abode is of no account. It is the political ties which determine the quality." Apply this principle to the law of nations, and it is evident he would be an enemy if he had sworn to support the constitution—and the reverse if he had not. "Whilst a man continues a citizen of his own country, he is the enemy of all those with whom his nation is at war."

To test Koszta's claim to protection on the score of citizenship, let us inquire whether he had duties upon him in favor of one of the belligerents against the other, (supposing a war to have existed between us and Turkey) which, if called into action, would be hostile in their effect. If he had, he is an enemy. If he has not, he could not be treated as an enemy, without trampling upon the law of nations, although he was found in the heart of the country with which we were at war. That such was not Koszta's case no one will deny.

In my humble judgment, it is manifest that the doctrine of domiciliation in one country establishes the right to protection whilst

in another country, *from that country itself and no more.* I will illustrate more fully my idea of the meaning of this law of domiciliation. Suppose that Koszta having a domicil in the United States, goes to Turkey, and whilst there is seized and imprisoned by a foreign power, (which power is Austria,) it is the duty of Turkey under this international law to give him protection. This is most unquestionably her duty as imposed by this law, and this is the extent to which it was meant to be exercised. It has no reference whatever to the right of protection to be claimed from the country where he has the domicil. It is simply an international agreement of nations, to give to foreigners having a domicil in another, protection to them whilst within their own. A naturalized or native born citizen does not stand in need of this protection, becuase his own government is bound to protect him in his rights against all foreign maltreatment. This right or protection to the native born or naturalized citizen both at home and abroad arises out of the reciprocal obligations—"protection and allegiance." If a nation refuses protection to a foreigner having a domicil in another country whilst within her own territory, she violates this international law and is guilty of a breach of faith. Hence any of the nations have a right to punish her for it, and *intervene* to prevent any other nation from violating it—provided she chooses to *intervene*—for it is ***strictly an intervention right.***

The ground upon which the Secretary of State bases his argument of the right of Koszta to claim protection, and the right of this government to respond to it, is this :

"That Koszta had acquired a domicil in the United States. That this domicil clothed him with the national character of this government. That this domicil, coupled with his declaration to make it his future home, as shown by his declaration on oath, under the operation of international law, entitled him to protection."

By the constitution of the United States it is ordained that Congress shall have power to establish "a uniform rule of naturalization." The power to carry this provision into execution is granted. Congress, in the exercise of this important privilege, has passed rules of naturalization. Certain conditions are required, which must be complied with to secure this right. I shall name

the most important: Declaration on oath that it is the bona fide intention of the party to become a citizen of the United States, and to renounce forever all allegiance and fidelity to all and every foreign prince. *To swear to support the constitution.* These having been complied with, he becomes a naturalized citizen, and then it is that he is clothed with the right to protection at home and abroad, and this protection cannot be refused him. In regard to this right he stands upon equal footing with the native-born citizen, and who doubts that he is entitled to it? To refuse protection to either of these would cover us with lasting shame, and degrade us as a nation. I shall presently show that the rights secured to the naturalized citizen are fixed by the fundamental law, and cannot, therefore, be abridged, except by amendment constitutionally made. What are the rights granted to naturalized, in contradistinction to those vouchsafed to the native-born citizen? In reply, I say that they are all the rights, excepting qualification for President and Vice-President, and I base my opinion on the fact, that there is express provision made requiring these offices to be filled by native-born citizens. This, then, is the only prohibition, and, ex-necessitate, all the other rights are granted.

The first part of the naturalization rule, is simply a prayer for the grant. It merely asserts the intention to do a certain thing—which thing cannot be done until the intention is carried into effect. Will any one deny this? The allegiance, therefore, is not perfected until both conditions are complied with. Why is this: Because until the oath is taken to support the constitution, the party has not entered into the civil compact, and consequently the nation has no control over him. Whilst within her territory, she has such right over him as is recognized by the laws of nations, not by virtue of his having taken the first step towards becoming naturalized, because that is an imperfect act, but by reason of the protection which she yields him whilst within her realm. If he leaves the United States before the act of naturalization is perfected, and goes into another country, and whilst there a war should break out between that country and this, where he had a domicil, and he should fall into the hands of one of our men-of-war, could he be compelled to fight, and if he refused, could he be

punished as a traitor? Certainly not. The reason is palpable. He had not sworn to support the constitution, and the right to punish treason is only to be derived from the power therein granted. "Art. 3d, Sec. 2d. The Congress shall have power to declare the punishment of treason."

Now if the doctrine held by our Secretary of State be valid, Koszta could, in such a state of things, be tried for treason—and if not bound by allegiance to support the constitution, he had, therefore, no claim to protection from the United States whilst abroad.—The protection which he could only expect, was that guarantied by international law, and applied to the government where he was. This is incontrovertibly correct, and cannot be refuted.

But it is said if Koszta, having a domicil in the United States, and having declared his intention to make this country his future home, and having no settlement elsewhere, is not entitled to protection from us when abroad, where is he to obtain it? I answer emphatically, that the country in which he was must be looked to for it, and the international law recognizes this right.

It is alleged by our Secretary of State, as a strong argument in defence of Koszta's claim to protection from this government, that though he had not effected the step of naturalization, and thus acquired all the rights of an American citizen, yet he is entitled to protection, and the government may respond to it.—We have a right to infer from this, that a portion of the rights enjoyed by a foreigner makes an American citizen of him, and that the remaining rights, (the most important of all,) viz: those of having the privilege of a vote, and of holding office at home and abroad, may be withheld, and are withheld, with the view of compelling the foreigner to remain a certain number of years before he can enjoy them, and that this provision or restriction by Congress was adopted for good reasons. I care not what the reasons are.—Congress has full power to make a rule allowing foreigners to become naturalized citizens the moment they take the oath now prescribed, by simply making them swear allegiance to this government, and taking the oath to support the constitution of the United States—then they would be citizens in every sense

of the word. Will any one deny that Congress has this constitutional power? I contend that until such an alteration is made by Congress regarding the naturalization rule, none but foreigners who have fully complied with the conditions required by our naturalization laws, and native born citizens, *can claim protection* of this government *when abroad*, and that this government is not bound to respond to it. If she does it, it arises out of the recognition of this international law, and she at once embarks on the *scheme of intervention*—a right she possesses, but one which, as regards the powers of the old world, is fraught with the most dangerous consequences to her future prosperity and happiness. She owes her first duty to herself as a nation, and she should never *intervene, except where she feels that her safety is endangered.*

Kent says: "Our laws require the services of *naturalized citizens in time of war*, even if the enemy should be their native state, and *it has resisted all attempts by such state to punish them as traitors.*"

Apply this to the argument I have already adduced. Does it not fully sustain it? Certainly it does. For if naturalized citizens are not to be treated as traitors by the country from which they emigrated, when at war with us, if not naturalized they could. As a nation we maintain this doctrine, and the reason is obvious. Our government considered naturlized citizens as entitled to its protection, and as having fully broken off all allegiance with the country of their birth. For naturalization is citizenship; all writers upon international law so consider it. Until, then, the entire step is taken and consummated, the party stands outside the family compact, and as such must be regarded.

Our Secretary of State, speaking of the conduct of our agents at Smyrna, says: "There is another view of the case which places the conduct of our agents upon equally defensible grounds. As the naturalization had not been effected, they hesitated at first to receive him under protection, but the facts show that they *ultimately* yielded to his application. He received from each a *terkerch—in effect a certificate*, that the person to whom it is given is cared for, and received under the protection of the government whose agent has granted it. By the laws of Turkey and other

Eastern nations, the consulates therein may receive under their protection *strangers and sojourners. The persons thus received become thereby invested with the nationality of the protecting consulate.* International law sanctions and recognizes the rights acquired by this connection."

Our Secretary of State proceeds to cite the opinion of the Lords of Appeal in the High Court of Admiralty in England, in which it was decided, in 1784, that a merchant carrying on trade at Smyrna under the protection of a Dutch consul, was to be considered a Dutchman as to his national character. The decision, he says, has been examined and approved by the eminent jurists who have since written treaties on international law. According to the principle established in this case, he contends, to use his own words, "*that Koszta was invested with the nationality of the United States, if he had it not before, the moment he was under the protection of the American Legation at Constantinople, and the American Consul at Smyrna. That he was so received, is established by the terkerch they gave him.*"

This, I maintain, is a grave proposition. It is strictly, as I shall show, an *intervention doctrine.* No one will deny that Turkey has the right to grant to consulates the privilege of taking under protection strangers and sojourners, and that the terkerch (a kind of passport) thus granted in virtue of said privilege, clothes said stranger and sojourner with the national character of the protecting consulate. But I apprehend that our consulate must derive authority from his government, before such privilege can be embraced, and protection given. Does the privilege thus granted by Turkey, of itself, without any sanction from this government, empower our functionaries to adopt it? Assuredly not. Those functionaries are under the control and restriction of their government, and when an important privilege, or rather vast power, like this, which clothes those to whom it is extended with our national character, and entitles them to protection, is used, it must be derived from this government direct, of which they are the mere agents. If such power were granted to our consuls, would it not of necessity lead to intervention? It would be, in my judgment, a very unwise thing to permit our consuls to have any such power.

That it would be liable to abuse is obvious, and that it would involve us in difficulties with the nations of Europe, is doubtless true. What is a passport? It is a safe conduct. It contains a pledge of the public faith that it shall be duly respected, and the respect paid to it is essential to the character of the government which grants it.—It is a proof of citizenship.

The power to grant the passport must emanate from the supreme authority. True the power may be delegated. Native born and naturalized citizens going abroad are entitled to a passport from this government. If they leave without this precautionary step, our functionaries abroad doubtless are empowered to grant it to them. But a foreigner who is not naturalized, upon leaving this country for foreign parts, is not entitled to protection from this government, except within her own territory. If he takes passage in one of our vessels, he is entitled whilst on board to protection, on the ground, I think, that the ship is a part of the territory. The moment, however, he leaves her, he passes under the protection of the nation which receives him. It may be asked, is not a foreigner who has a domicil in this country, entitled to a passport when he goes abroad? Certainly not. The passport being a protection, cannot be extended to him—there being no mutual reciprocal obligation between him and this government. Our honored Chief Magistrate and the Secretary of State contend, that Koszta, under the provisions of international law, had the right to claim protection from the United States, and that this government had the right to respond to it. I maintain that, if he had the right to protection, the corresponding right to protection followed. It could not be with the government a matter of discretion, but one of obligation. The right to claim protection, renders the obligation to yield such protection an absolute one. It is a settled point in national law, that he who has made a promise to any one, has conferred upon him a real right to require the thing promised—a perfect obligation on the one hand, produces a perfect right on the other.

In concluding my remarks upon this part of my lecture, permit me to propound a few questions material to the case. Where is the proof that Koszta did intend to return to the United States?

It is alleged, not proved. Where is the proof that he went to Turkey on private business of a temporary nature? It is alleged, not proved. Even adopting the views of the Secretary of State, of the right of Koszta to protection, these facts should be stamped with proof!

Was Commander Ingraham's conduct improper? I think not. He could not have pursued a different course under existing circumstances. In charge of the protection of the persons and property of those who were supposed to have a right to protection, he was bound to render it. Look at the circumstances then pending. Instructions were sent to him from the American functionaries (who must be presumed to have an intimate acquaintance with the law of nations, and the national law in the case) to demand the release of Koszta. There was no time to delay. It was known that Koszta was to be taken away clandestinely. If aid was to be rendered, it must be prompt. If the demand was to be made for his release, the party enforcing it must exercise his own judgment. It would have been a piece of presumption and intolerant vanity, for Commander Ingraham to have constituted himself a judge of the merits of the case. He could not be presumed to know as much of law, as the regular deputed agents of government. It was therefore proper—aye, it was his duty—to use military force when told that the sacred rights of an American citizen were being trampled upon and grossly outraged. He had no right to go behind the instructions of our representatives abroad. They had declared Koszta entitled to protection—had clothed him, as our Secretary says, with American nationality, and if Ingraham had acted differently, his reputation would have been endangered. His conduct must be approved of, and if any blame attaches to his violation of neutral territory, the agents of this government must bear the responsibility and blame.

The whole question, then, about which so much ado has been made, may be condensed into a nut-shell. Was Koszta entitled to protection while in the Turkish dominions from this government, and if so, upon what grounds? As a citizen, clearly not. For a citizen can be such only upon two grounds—natural birth or naturalization; the latter being that peculiar process adopted by the

civil compact, as the means of passing over to one not born on the soil, the immunities of citizenship. Koszta was neither native-born nor naturalized. Whatever intention he may have formed, whatever steps he may have taken, he had not executed in deed the intention. He was not a citizen in the terms and spirit of the constitution, for the initiatory step was all that in his case was made. No passport could have been granted to him by the Secretary of State, for that is vouchsafed to citizens only. What he could not obtain here, he could not receive by our agents elsewhere; for the inferior powers cannot do, what the higher power may not. This is clear. Could Koszta claim protection from us while in the Turkish dominions as an inhabitant resident but not naturalized, or a sojourner travelling through the country? The one he was not, and that is out of the question. The other is the only ground, and upon that what says the law of nations and the great national law at home. Not owing allegiance, because not sworn to obey the constitution, and not being a member of the civil compact, neither yielding it allegiance, nor receiving from it protection in the fullest sense, it has nothing to do in his case. The international law makes it obligatory on all other nations to protect, as its *own*, citizens of other countries, resident within them: and their country has a right to expect the recognition of its nationality in the person of one who is clothed with its sacred immunities. But Koszta was no citizen—all then that can be said is that he was on Turkish soil, and by the international law entitled to her protection; inasmuch as he was permitted to enter it, and could not be outraged in his person or liberty, without charge of offence against international law and justice; and without a violation of Turkish hospitality and duty. The claim of national character by domiciliation amounts not to the claim of citizenship; and this whole theory of domicil has been, in my judgment, forced into this controversy, in violation of the express principles of the law writers adduced.

I propose to say a few words in this connection, on the naturalization laws. The constitution has made provision for the introduction of foreigners into our great family compact, and clothing them with the privileges and immunities of citizenship,

save that from one privilege she totally excludes them; and that is ineligibility for the office of President and Vice-President, as shown by Art. 2d, Sec. 1, clause 4, and Art. 12 of amendment. With this exception, the naturalized citizen is placed upon the same footing with the native born; but before he can be elected to the National Legislature, it is necessary he shall have been a citizen of the United States a certain number of years. Our fathers did not turn a deaf ear to the oppressed of other lands, or close the door against their admission, by adoption of exclusive or intolerant principles. They opened wide the doors for the admission of those not nurtured on our soil; and in this, they acted wisely; and they did another noble act, in withholding from Congress the power to abridge those rights. By their forethought, this power can only be exercised by amendment of the constitution, which, for the honor and glory of the nation, it is to be hoped, will never be consummated. Since those who transmitted to us that rich legacy, estimated the claims of naturalized citizens as nearly equal to those born on the soil, surely we should not be less Catholic in our feelings, and fraternal in our spirit. Our fathers! were they less jealous of the encroachment of foreigners than we are? What would we have been, but for the strength which this foreign element, domiciled among us—incorporated with us, brought to this government? Look at us now—a nation of twenty-five millions, with a commerce not inferior to that of proud England, and a name as bright and powerful as hers. Have we, native born Americans, effected this wondrous growth and expansion, by energies all our own? Our vanity is great, but not quite sufficient to permit us gravely to claim this much as all our own. Native born Americans are not numerous enough to make an amendment of the constitution, for it takes three-fourths of the several states to do this. It cannot be done without the co-operation of the naturalized citizens, and surely they must be lost to every impulse of a generous sympathy to those of their native land, who would lend their aid to such a purpose. It is our policy not to intermeddle with it. We should regard it as one of those beautiful compromises of the constitution not to be touched. There is a sufficient restriction imposed upon them already. To be entitled to a seat on the floor

of the House of Representatives, they must have been citizens seven years. To be in the Senate of the United States, they must have been citizens nine years. This is the fundamental law, and can only be altered, as I have said, by amendment. Each is protected in his rights. If the native born citizen desired to restrict or abrogate those rights of the naturalized citizen, an amendment of the constitution would be necessary. On the other hand, if the naturalized citizen desired the privilege of holding a seat in Congress the moment he was naturalized, an amendment of the constitution would be requisite. A fraction over one-fourth of the several states could defeat the measure. These are just and wise provisions.

We shall continue this deeply exciting theme by glancing at the state of Europe, and thus ascertain what her anomalous condition requires at our hands. Our course it is manifest, must be shaped by what is either actively developed in the policy of the great powers of the old world, or else, for the time being slumbering in their bosom. Though ours be a peace policy and one in all respects strictly neutral, still as a great and wise people it becomes us, to cast an eye of intelligent observation over the great family of nations, and provide for the perpetuity and honor of our great name. There is beyond question a struggle impending between the Despotism of Russia, and the freedom of Europe. The design of the mammoth power of the Cossacks, is to sink England to an insignificant position in the world, in which degradation France must of necessity share; and while we hold up the flag of peace, and profess our determination to stand on the ground of strict non-intervention, as long as the safety of the world will permit, we should decide for ourselves what we shall do in any possible emergency, and notify the world beforehand,—that we may prove true to ourselves as well as true to the interests of mankind.

The great object which the Emperor of Russia has in view, is to obtain the possession of the Dardanelles. His main energies are being directed towards the accomplishment of this object. What would be the effect of his power when in possession of the Dardanelles? He could close all the commerce of Constantinople and the Black sea. He would be then not only invincible but

invulnerable. The Black sea would become the harbor of Russia, into which no foreign fleet could force an entrance. It has been the project of England and France for years, to thwart the design of this vast power, whose purpose it is to found universal dominion by the monopoly of the commerce between Europe and Asia. Yet notwithstanding all their efforts to prevent it, she has succeeded in forming a treaty of defensive alliance with Turkey—which provides that in the event of Nicholas being involved in a war with any other nation, none of the vessels of war of that nation, are to be allowed to pass the Dardanelles on any pretence whatever. This has been remonstrated against but with no effect. By this treaty the Dardanelles may be said to be in the defence of Russia, in the event of a war with any other power. She has thus acquired a step towards the possession of this strong hold, which can alone prevent the balance of power in Europe, from being destroyed. Nicholas has at present the sway unlimited over 70,000,000. His power is despotic. His resources are superior to that of any other monarch. He has a militia of 8,000,000 of well armed men. A standing army of thoroughly drilled troops of 1,000,000 (200,000 of which are as good cavalry as can be found any where.) Her navy is equal to that of France, and is rapidly being increased. Her territory comprises 1-7th of the habitable globe. Her revenue is $50,000,000 per annum. What is the character of the monarch at the head of this powerful nation? He has a mind of the highest order. His energy is indomitable. His ambition is as boundless as that of Napoleon. Napoleon predicted that in less than fifty years Europe would become either Republican or Russian. The prediction of such a mind is not to be despised. Suppose this majestic power is bent upon advancing how is it to be checked? Will Austria and Prussia arrest it? Both of these powers are despotic, and are consequently to be presumed to be in favor of the expansion of despotic principles. How then is it to be checked unless England and France, both tolerating the spread of liberal principles, protest and back their protest by force if necessary? If he obtains possession of the Dardanelles further protestation is useless. That step accomplished and he is beyond

their reach. Is he not at this moment sounding the policy which England, France, Austria, and Prussia, intend to pursue should he provoke Turkey to hostilities? This then is the state of affairs in Europe—A war is already threatened, and if England and France do not protest by more than wordy pamphlets, the Dardanelles must inevitably fall to the possession of Russia—Turkey unassisted would soon pass under the subjugation of Russia, and now or never, is the propitious time for England and France, to assume a bold and determined attitude, and let Nicholas distinctly understand, that any interference with Turkey, will be the cause of resistance on their part. Is it not the policy of both those governments to take this stand; and are they not politic governments? Do they not keep a keen view to their own interests? Have they not always been jealous of the slightest infraction of their rights? Will not the possession of the Dardanelles by Russia endanger those rights and those interests? Why then if this be true, and none can doubt it, do they not at once unfurl their banners, and support the Turkish cause? Russia would hardly have dared to menace Turkey to open hostilities if such an attitude had been assumed, and measures taken to support it. Both England and France are thoroughly equipped to back up whatever they undertook, and yet they stand quietly looking on. They seem to prefer a nuetral position, which very neutrality if persisted in, at no distant day, will endanger their very existence as nations. Why then this state of apathy? There must be some reason for all this—some secret scheme in contemplation; otherwise at such a momentous crisis as this we would find decisive steps taken. At the time this Lecture was delivered before the Maryland Institute it will be borne in mind, that no treaty of alliance between France and England had been formed; and I maintain, upon the grounds that will be set forth in this Lecture, that notwithstanding this treaty, England will not be secure from the grasping ambition of the Emperor of France. It is unquestionably the interest of the French Monarch to keep in check the advancing steps of Nicholas of Russia; hence the treaty. But this being accomplished, it is clear to my mind, that he has other schemes for his own

aggrandizement which I shall now endeavor to unfold as a speculation of my own; justified or at least made probable, by the history of the past and present.

Look at France! see how rapidly she is augmenting the strength of her naval and military power. Is all this done to protect herself from invasion, or to maintain her rights as a nation? Look at the man who is at her head! He has astonished the world with the developement of his natural powers—powers which few conceived he possessed. Every scheme he undertakes is accomplished even before it was known to have been contemplated. From being a President he has risen to that of monarch. This proves that he has a moderate share of the ambition of Napoleon. I predict that he has a scheme in view, beyond any thing yet developed, and a grand one in the bargain—and that is the extention of the limits of his Empire; and the period is not distant when this step will be taken. He who knows any thing of the French character, must be aware that this nourishing into activity her martial spirit, is not necessary for self-defence. All who know the excitable restless spirit of the French, must be aware, that the military spirit thus roused, cannot be kept dormant, and inactive. It needs excitement and excitement it will have or it will cause the present Emperor the loss of his throne. The scheme he has in view is to bring about a rupture with England. This he is indisposed to do by any open flagrant aggression, for fear of its not being supported by the government. But there is a chord, which when touched, will reach the heart of a nation as readily as that of a man. The French have not lost their admiration of Napoleon—it slumbers but it is not extinguished. It can and it will be roused into activity by the present Emperor The British lion that marks the overthrow of Napoleon on the plains of Waterloo, will be made to crumble to the earth. Could proud Britain stand this unmoved? Would it not rouse the martial spirit of the nation? Would it not be a direct insult to British pride, though not in itself an act of hostility? The extension of the boundary of France coupled with this open insult, would be ample ground for war—and war would inevitably ensue. This I predict is the dreaded crisis to be apprehended in Europe.

Suppose England and France to be engaged in a war—what line of policy are we to pursue? Our true policy would be to let them fight it out. But suppose Russia backed by the other powers, should step in and take sides with France, what is to be our policy then? Could we look on, and let the despotic powers interfere in a war between the only two governments of Europe, where liberal opinions are permitted to be entertained? Could we behold England (despite of existing jealousies) battling in deadly conflict with powerful France; and urged to her death struggle by the despots of Europe? In spite of our policy not to interfere in the difficulties of the European nations; the proud spirit of this nation; her love of justice; her attachment to liberal principles, would force her to lend a helping hand to England. There could be no other alternative. Our preservation and perfection as a nation, which it is our duty to guard, would be endangered. England is a mighty power; yet she would in all probability fall beneath such powerful odds, and with her fall, perish forever the hopes of the oppressed of Europe. England bears towards Europe a position somewhat similar to that which we hold to the governments on this continent. Her liberal institutions, constitute her as it were the seat of freedom there. Imagine for a moment a war waged against England by France, Russia, Austria and Prussia—for they would all be likely to take a share in it; her system being the most obnoxious to them. Her commerce, the source of her strength, exposed to the fleets of those powerful nations—her possessions exposed at every quarter, and the national debt of 5,000 millions of dollars daily augmenting in an unequal contest, and no aid at hand to help her—in the nature of things she must fall. Despotism at that moment has universal sway in Europe; and Nicholas of Russia aided by Napoleon of France to guide it. But it will doubtless be contended that this calamitous state of things will never come to pass. This may be true! but still there is no proof that it will not. By one bold move Poland with her 20 millions of inhabitants was annexed to the territory of Russia, and swelled her treasury twenty millions a year. I presume, if any one had predicted this grand step of usurpation, he would have been regarded

as remarkable for his credulity. Yet it has come to pass, and that too at a time, when every bosom throbbed in sympathy with her struggle.

Suppose England blotted out from the family of nations; and France crippled by the war; would the ambitious Nicholas be satisfied? Not at all. It would give greater thirst for power. Master of Europe he would turn an anxious gaze upon this continent. He would gird himself for the battle—and then would come the war between Despotism and Republicanism. To avert this state of things calls for an open avowal of our policy, and our determination to carry it out. I am opposed to alliances of every kind. Let us enter into none—but let us consider what ought to be done, should such a drama be enacted as I have predicted. But no doubt great objections would be arrayed against the declaration of such a policy, on the score of its being regarded by the Despots of Europe, as one of animosity. That we would be in danger of an hostile attitude being assumed towards us. Let those who entertain such sickly notions be at ease. They need have no fears. We are not in our infancy. We number some twenty-five millions; among whom are to be found plenty of stout hearts, willing to shed their last drop of blood in the defence of our rights, and the maintenance of our principles. We have a right to an opinion; and we have a right to express it, and if necessary back it. We hold a place in the great family of nations as respectable and as lofty as any. Surely then we have the right to speak out on matters in which we are particularly interested, and declare an opinion. The right to look to our future safety is a natural right, and with a view to this it becomes us to take precautionary steps in advance. It is not our policy to meddle with the internal management of any nation, or between nation and nation. But when despotism is arrayed against liberal principles and institutions, in the manner I have contemplated, it is proper we should *intervene;* and it should be the declared policy of this government to step in, and use her endeavors to check it. By persuasive means at first—by an appeal to arms as the ultimatum. I presume we may be allowed to exercise this right.

Should we be afraid to take such open and manly ground, we can take advantage of the privilege recognized by the Law of Nations. "When a nation is not capable of preserving itself from insult and oppression, she may procure the protection of a more powerful state." Or. "It is the interest of Princes to stop the progress of *an ambitious monarch who aims at aggrandizing himself by subjugating his neighbors.*"

As regards our policy in reference to this continent it seems plain. We should permit no interference by the European Powers. We should respect their rights over the countries they hold here. We should do all in our power to cause our citizens to refrain from interfering with them. But when the people in those possessions, absolve the ties that bind them and become independent; no intermeddling is hereafter to be permitted in their internal concerns; nor will we ourselves interfere. The people in their sovereign capacity shall live under such form of government as they may deem fit. None of the nations of the old world will be permitted to erect upon their ruins a government of their moulding. Nor shall they acquire one foot more of territory than they now possess. This must be our policy if we have an eye to our own safety and perfection as a nation.

CUBA.

I come now to discuss our policy with reference to this Island. Since the invasion by Lopez, the French and British Governments have thought proper to propose a tripartite treaty with this government; the object of which was to secure Cuba forever to the dominion of Spain. This project was discountenanced by that consummate statesman Mr. Everett. Lord John Russell in a recent despatch says, "that it would appear that the purpose not fully avowed, but hardly concealed, is that the United States have an interest in Cuba to which Great Britain and France cannot pretend." If I am not greatly in error the people of this country have no desire to conceal, that they not only regard their interest as being greater than that of England or France, but that they will never permit this Island to pass into other hands

than that of the United States. A careful examination of the political importance of Cuba (not on the score of extension of territory) must satisfy every reflective mind that our safety and prosperity would be endangered if we were to permit it to pass into other hands. Her size, geographical position, and the situation, great strength, and fine harbor of Havana, render her as it were the mistress of the Gulf of Mexico. In the hands of Spain her natural capabilities are not likely to be turned to the prejudice of commerce in general. In the hands of any of the other European powers, the case would be different. She would be made the basis of warlike preparations, to the great detriment of this country. Cast your eye over the map and you will perceive that I am right. Our vessels crossing the Florida gulf stream pass between Florida and the Bahama Banks, and come butt end upon Cuba. The passage here is in some places not more than eighteen miles wide. To reach the ocean they must pass through the old Bahama channel which is situated between Cuba, and the Bahama Banks, or pass between the Keys and Cuba. Station a squadron in this last entrance, and the commerce of the great West must be intercepted.

Lord John Russell attaches great importance to the proximity of Jamaica to Cuba, and regards this as giving a superior claim to England over that of the United States. If I mistake not Key West is as near if not nearer. I am not surprised that this fact should have escaped the shrewd observation of his Lordship, because singular to say the neglect until of late of this important post by our government was well calculated to cause his Lordship to lose sight of its true position. The attacks which have been made on this Island, doubtless gave rise to the tripartite proposition. Notwithstanding the European Press hold us up to the world as a nation of Pirates, it stands fully proved to be a base and unfounded charge. With a view of restraining Lopez and his coadjutors from the invasion of Cuba, this government acted in good faith. She did all in her power to carry out existing treaty stipulations with Spain, in preventing as far as was possible, her citizens from fitting out expeditions against that Island. The Executive then in charge of the national affairs, with the view of

arresting all such attempts at invasion, in his too zealous care did in my humble judgment exceed his legitimate powers. By a statute enacted with a view of showing our good faith in the support of treaty stipulations with Spain, it was provided, that every civil and military officer of this government are bound to arrest and bring to trial and punishment every such offender. Penalty of the offence $3,000 and imprisonment for three years. I have said that the Executive transcended the powers entrusted to his care. Did he not issue a proclamation declaring such armed expeditions as piratical? Did he not send the vessels of the Home squadron, into the very waters of Cuba to prevent the landing of such expedition? No man is more in favor of strict maintenance of treaty obligations than I am. No man is more opposed to the course pursued by those infatuated men, who embarked in that scheme. But I hold it to be our duty to conform to our treaty stipulations, as provided for by statute and punish the offenders according to the terms therein specified. What is the duty of the Executive? Is it not to take care that all the laws be faithfully executed? Now a treaty is a law and it is his duty to observe it. How is he to enforce the due execution of the law? He is to use such means as the constitution and laws have placed at his disposal. He cannot employ the public force. The general jurisdiction extends into the sea a marine league. The United States have recognized this limitation. No nation has any right or jurisdiction at sea except it be over its own public and private vessels, and so far territorial jurisdiction may be considered as preserved; for the vessels of a nation are in many respects considered as portions of its territory; and persons on board are protected and governed by the laws of the country to which they belong. They may be punished for offences against the municipal laws of the state, committed on board its public and private vessels at sea, and on board its public vessels in foreign countries. Piracy is a robbery, or a forcible depredation on the high seas, without lawful authority, and done animo furandi and in the spirit and intention of universal hostility. They are regarded as the enemies of the human race, and the most atrocious violators of the universal law of society. They

are every where pursued and punished with death. Every nation has a right to attack and exterminate them, without any declaration of war. Congress are authorized to define and punish piracies and felonies, committed on the high seas. In pursuance of this authority, it was declared by the act of 1790—that murder or robbery committed on the high seas, or in any river, haven, or bay out of the jurisdiction of any particular state; or any offence, which if committed within the body of a country, would by the laws of the United States be punishable with death, should be assigned to be piracy and felony, and be punishable with death. Piracy on the high seas is piracy by Congress, as well as by the law of nations. The statute of any government, it is true, may declare an offence committed on board its own vessel to be piracy; but such offence would be punished exclusively by the nation which passes the statute. But piracy under the law of nations, is an offence against all nations, and punishable by all. Apply these established and recognized principles to the Executive's proclamation, and course pursued. Do they not fully prove that he exceeded the bounds of his duty, and vastly transcended the limits of the power confided to him? His motives doubtless were patriotic. But good motives cannot legitimatize an unconstitutional deed. It is therefore both prudent and politic to watch closely any assumption of power, and guard against abuse. It is manifest, that the armed expedition under Lopez, which were fitted out in this country, could not be regarded as piratical by the law of nations, nor were they so regarded by foreign powers. Neither were they piratical by act of Congress, whose duty it is to define and punish piracy and felony committed on the high seas. Nor was it an offence, so declared to be piracy, by any statute of this government, and as such punishable by it exclusively. Not at all—there is not a shadow of authority for the proclamation of it, as piracy, by this or any other government. It was the mere dictum of the Executive, and had foreign nations thought proper to avail themselves of it, they were at liberty to capture all such vessels; punish all on board with death and confiscate the property. To test the President's right to declare the expeditions piratical, we must ascertain whether it be so by the law of nations

—or by act of Congress—or by special statute of this government and punishable by it exclusively. No such authority exists. Suppose a capture had been made, of one of the vessels of the expedition, by a foreign power, and those on board had been treated as pirates, would our government have tamely submitted to it? Certainly not; for the declaration of the Executive upon his own responsibility is not law; and the government is not bound by it. Where is the law of nations, or of this government, which declares such expeditions piratical, and punishable with death? No such law can be found. The statute punishes the offence with fine and imprisonment. It was the duty of the Executive to use all proper means to carry out the provisions of this statute. To do this was he to declare the act of an armed expedition against Cuba as piracy and thus punishable with death, perpetrated by those who had succeeded in escaping from our own waters; when such act, would within our own territory, have been only punishable with fine and imprisonment. The Executive had fully performed his duty when he did all in his power to prevent the equipment and egression of such expedition from this country. To define such expedition as piratical belonged to Congress and not to the President. The sending of our armed vessels into the waters of Cuba savoured of intervention. A doctrine we have studiously abjured. Carry this system out in this way, and Cuba is as thoroughly secured to Spain, as if we had agreed to the tripartite proposition. Even if the Cubans desired to become independent of Spanish rule; under such a system of guardianship of the United States, they could never achieve it. But at the time that Lopez invaded the island, it is asserted, that there was no disposition on their part to create a revolution. The unsuccessful result of Lopez's expedition is assumed as proof. This is not a correct view of the case. Had Lopez dashed boldly into Havana instead of going to Cardenas, his mission would have been successful and Cuba would have been emancipated from Spanish servitude. For at that time the military were scattered over the island, and the fortresses at Havana in no condition to make a bold resistance, even if the disposition to do so actually existed. The spirit of the Cubans was ripe for

revolution and Havana the very hot bed of it; but in no condition to make a demonstration without extraneous assistance. Since that period to the present, the military has been greatly increased, and a large squadron in guard of the coast. The Cubans are heavily taxed—they are not allowed even to have social parties without the permission of the Capt. General.—If two or three are seen engaged in close conversation they are summarily dispersed. In fact they are harrassed in every way. Why I ask should they not pant for freedom? We for much less reason asserted our independence, and that too, in the face of the most powerful nation on earth—the parent country.

By treaties made with England in 1817, Spain stipulated that the slave trade should be abolished throughout the entire Spanish dominions in 1820. £400,000 was paid as the price of this assent. In 1833 England taxed herself to the extent of £800,000 per annum, by emancipating her slaves in her colonial possessions, which prevented her colonies from supplying her with cheap sugar by means of slave labor. A few years since she passed an act, which admitted slave-grown sugar the produce of foreign possessions. By this act she violated her good faith with her colonies, and gave an impetus to the slave trade. The number of slaves imported annually is 30,000. This very traffic yields an annual revenue of $2,500,000 to the Spanish crown. The trade was nearly extinct in Cuba in 1834 and 1835. The act of 1846 led to the importation of 64,000 in that year, and the succeeding year to 63,000. The importation of slaves into Cuba gives a good supply of cheap labor, and this it is which has made it so valuable a possession to Spain.

What is the policy of England now that the tripartite proposition has failed. It is said that she intends to Africanise Cuba, by introducing apprentices from Africa. I do not place much faith in this report; yet I believe she would do it if she dared. If this report were true, at the end of fifty years the island would be a colony of blacks. The mere acceptance of the proposition would be a virtual surrender of Cuba to England by the Spanish government. Depend upon it England knows full well that such monstrous and daring aggression would meet with decided remonstrance, aye resistance from this government.

Our policy is to see that if Cuba passes into other hands it would be our own. To purchase it of Spain if she is willing to part with it. To annex it if desired, whenever it becomes independent. England and France know full well, that Spain cannot long continue in possession of it;—the cost of its support being a very enormous tax. If Spain enters into any treaty with England to Afracanise, or in any way to interfere with it; our line of policy is plain—seize the island and stand the consequences. Why? because we having determined, to prevent the possession of the Island by any other power; and being therefore under obligation to resist it, if attempted, are not compelled upon any principle of justice or right, to wait until the seizure is effected. That would involve us in a war under the most disadvantageous circumstances: and cost a vast amount of loss both of treasure and of blood. Our policy of respect for the rights of Spain is spread abroad in the full gaze of the world. Our denial of the right of any other nation to appropriate it to themselves, is no less unequally proclaimed. Why should we not then avow our determination to seize it for ourselves the moment any definitive act of appropriation is accomplished by any other power? War must follow upon such possession and appropriation, or our whole policy be changed; which is utterly out of the question—We should maintain that as soon as we see the first step of an offensive aggression taken, it is our policy and duty to seize it ourselves, and leave to England the responsibility of waging war upon us for what we deem essential to our safety; rather than pursue a masterly inactivity, which will leave us no alternative but war under the most possible circumstances. The principles of self-perservation and future prosperity demand such a policy; and the people will respond to it.

NEBRASKA QUESTION.

The great principle involved, is whether Congress has the constitutional power, to legislate upon the subject of slavery, with reference to the territories. I hold the opinion that Congress has no such power; and it seems to my mind, a matter of easy proof.

*When the California bill was before Congress I had occasion then to deliver a lecture upon the principles involved in this very subject, in which I maintained the doctrine that the territory belonging to the United States, or that which we might acquire by cession and conquest must be free and unrestricted as to slavery. That all compromises to the contrary were unconstitutional. That the constitution was the only chart, by which the ship of state could be navigated, and as Congress derived its powers solely from the constitution, all its acts must be in conformity with it. That the power to dispose of and make all needful rules and regulations, respecting the territory, and other property belonging to the United States, does not embrace such power, because the rules and regulations must not conflict with other rights granted by the constitution. If Congress can legislate with reference to slavery with regard to the territory, (which is in the trust fund of the government for the benefit of all) then it follows that slavery can be excluded from the territory altogether. This follows as a natural consequence if such power exists, and the result would be at no distant day when the non-slaveholding states, having the requisite numbers to alter the constitution, would aim a decisive blow at slavery within the states. "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."—How so? If the North is placed upon a different footing than that of the South.

All the powers exercised by the United States must be delegated by the constitution; powers affecting territory, as other powers. What is not delegated to the United States, nor prohibited to the states, is reserved to the latter. The constitution expressly confers on Congress the power of disposing of, and making all needful rules and regulations respecting the territory. This is, by its very terms a specific clearly defined and distinctly marked grant. The power of making rules and regulations. It is a municipal power—a power to secure for the territory good and efficient government—not a power to do any thing, or engraft upon the territories, a feature repugnant to the spirit and letter of the constitution, or infringing upon the reserved rights no where surrendered. There

* See note on last page.

is no restriction affixed by the constitution to the settlement of the territories. It is open to all, and all in seeking in them an asylum and a home, are covered by the broad shield of the constitution, and protected in all the rights of property secured to them by the same, so long as the territories continue in their territorial vassalage. One may go as well as another, and going, carry with him whatever property he can constitutionally hold. The regulations which Congress is empowered to make, must be free from any infringement of those clear constitutional immunities. For there is no other power granted by this clause of the constitution, but the power to govern, and that within the true spirit and meaning of that instrument. What is not delegated is a reserved state right. *To legislate slavery out of or into the territory, is a gross infraction of the constitution because it is no where delegated.*

All legislative power is vested in Congress. This is of course a legislative power. If the right to restrict were conceded under the constitution, it must be as a legislative act. Now Congress is itself a creation of the constitution. It is a Congress of the United States; the representatives of the people of the United States. It is so constituted, that the rights of all are sacredly guarded, and no act even of Congress is binding, only so far as it speaks the will of the constitution. Can it be supposed that the constitution in clothing Congress with this legislative power, and extending it to the territories, (about which the confederation said nothing but what was contained in the ordinance) which is the property of the United States ever designed to sanction any such exercise of it, as would absolutely divest its own citizens of their solemn and sacred rights; the dearest of all rights, rights of property. What are the United States?—the people in their sovereign and aggregate capacity. The property belongs to the people, subject to their own organic and fundamental law. The territories are theirs to dispose of or regulate as Congress empowered by them to act shall decree. The rules and regulations that are needful, Congress has power to make—needful for what? There is surely meaning in this word thus solemnly used—needful for good and efficient government, until they are qualified to take upon themselves, the responsibilities of sovereign and independent

states, and introduced into the family compact. Slavery is not in the meaning, or spirit, or letter, of the constitution antagonist to good government: for it exists in the states, and is recognized as not incompatible with Republicanism. "Needful rules and regulations." *These words are a restriction upon the powers herein conferred upon Congress, imposed by the constitution itself, and are well calculated and qualified, to assist us in its interpretation and construction.* So that I arrive at the conclusion, which I think sound, that the advocates of restriction can find no authority in that clause of the constitution, which refers *to rules and regulations; which evidently applies solely and exclusively, to government within the spirit and letter of this instrument.*

It is time that the question of slavery had ceased to agitate and disturb the tranquility of this growing rupublic. It is time that the people should settle the question, by declaring that in virtue of the constitutional compact, the territories belonging to the United States, or which may hereafter be acquired by it, shall be unrestricted as to slavery—that the people have the right to settle there, and take with them their slaves or not, as they may think fit. That the states which may be formed out of such territories, shall form their constitutions recognizing slavery as a domestic institution, or not. That all compromises to the contrary, are unconstitutional, and hence inoperative. This should be the declared doctrine and at once settled.

The spirit of compromise as manifested by our rulers, is at variance with the constitution; and its results must tend to weaken our national strength. The compromise with which we have to do, is of a different character; and calls for the sacrifice of party spirit, and petted and long cherished feeling. Let us go back to the beginning, and emulate those who looked to their country's weal, and to that alone for their deliberations, and then we shall never consent to measures which would conflict with the charter of our liberty, until having found it defective, or insufficient, we amend it according to its own provisions.

NOTE.—I take the liberty of inserting in justification to myself the following extract from an Editorial of the Baltimore Patriot of the 22d of February.

EXTRACT. "We see by the Annapolis Republican that Dr. Ninian Pinkney, of the U. S. Navy, delivered a lecture in that city last week, in the Hall of the House of Delegates, in which he touched upon the subject. The subjoined extract from his lecture, we copy from the Republican. In this a reference is made to a lecture which he delivered in 1850, when the California bill was before Congress, and in which he took the ground that is now maintained in the Nebraska bill, that Congress has no power to legislate upon domestic slavery in the territories. The lecture, many of our readers will remember, was published in the Patriot, in March, 1850, and attracted great attention from the ability with which the important questions it treated of were discussed, as especially from the fact that it therein brought to public attention what at the time was an original proposition, to the unconstitutionality of any act of Congress discriminating between the laws that shall govern the territories belonging to the Union. Thus Dr. Pinkney may be said to have anticipated the coming up of this question, and on looking over his speech, delivered now four years ago, we are struck with the similarity of the arguments now used by some of the ablest advocates of the Nebraska bill, and those then made by Dr. Pinkney.

"The points made in his lecture of 1850, are those referred to in his lecture delivered in Annapolis last week, and the reader cannot but see the conclusiveness of them."

JK468
.P64P566
1854
Copy 1
RBSCD

20065669857