In consequence of the extraordinary pressure on our columns by the publication of Mr. Fuller's speech, our readers will excuse the crowding out of the usual variety of matter.

A State Government for Utah.

The Constitution of the State of Deseret was submitted to the President of the United States and presented in both houses of congress on Tuesday, April 2d, 1872, and referred to the committee on Territories. Tuesday, April 23, was appointed for a consideration of the subject, at which time Hon. Frank Fuller, (member of congress elect from the State of Deseret,) addressed the committee of the house, consisting of the following gentlemen: Hons. John Taffe, of Nebraska; Geo. C. McKee, of Mississippi; Elizur H. Prindle, of New York; Isaac C. Parker, of Missouri; David P. Lowe, of Kansas; Lazarus D. Shoemaker, of Pennsylvania; William H. Barnum, of Connecticut; William W. Vaughan, of Tennessee; Frank Hereford, of West Virginia; and Jerome B. Chaffee, of Colorado.

Mr. Fuller spoke as follows:—

Mr. Chairman, and Gentlemen of the Committee:—

I am grateful for the opportunity which you have afforded me and my colleagues, the delegates bearing the constitution of the State of Deseret, to present to you, and to the congress of which you are members, some of the reasons which impel us, and a majority of the citizens of that division of our common country, to ask for it admission into the family of States. Sustained by a large and intelligent constituency, not less than by the demands of justice and humanity, and urged onward by the needs of that commerce which is foremost in the march of empire, I enter with real satisfaction upon the task assigned me this morning.

At the last session of the legislature of the Territory of Utah, the people were invited, by a joint resolution of both houses, to send delegates from all sections of the Territory, to a convention, for the purpose of framing a constitution, under which, if ratified by a majority of the people, admission as a State should be sought. The convention was held, a constitution was framed, a large majority of the people signified their acceptance of its provisions, and the duty of presenting it to the President of the United States and to congress, was intrusted to us: to congress, because the constitution of the United States confers upon congress the power to admit new States with the consent of such State; to the President, because in the legislative acts of congress the President is constitutionally joined. We waited for no enabling act; but, as our needs are great, we have followed the illustrious examples of eight existing States of the Union, admitted without that formality, and are here to ask admission under the constitution, prepared as the voluntary act of the people of Utah. This, one party to the contract desired; and having indicated their full and free consent thereto, the constitution is now properly before you for consideration. It is the result of the careful thought of about one hundred mature minds. It will fairly sustain the most searching examination. It will be found, on critical inquiry, to possess those republican characteristics, which, by the constitution of the United States, congress is bound to secure to each State. The aim has been to unite in one instrument, all the excellencies contained in the constitutions of the thirty-seven preceding States. Upon it is irrevocably engrafted entire adhesion to all the provisions of the constitution of the United States; freedom for all mankind; perfect toleration for all modes of worship; a surrender of all claim to the public domain; and equal taxation for resident and non-resident property-holders. It further provides for minority representation in the legislature by cumulative voting; for equality of the sexes in the exercise of suffrage; for legislation which shall guarantee to persons of all races, colors and religions, ample and equal rights and privileges of education; asserts the obligation of paramount allegiance of every citizen to the federal government; and proposes to submit to the people whatever amendments congress may see fit to make thereto; which amendments, if adopted, shall remain in full force, to be revoked only by the act of congress and the people. Accompanying the constitution is a memorial which expresses the unanimous sentiment of the convention upon the subject of admission, and presents in appropriate language some of the reasons in favor of the measure.

I am of the opinion that the constitution—a few of the prominent features of which I have briefly summarized—will not be found inferior, as a basis for a truly republican State, to any existing; in some respects I believe it to be superior to all others. The effort has been to embrace within its provisions all those improvements in the economy of government which the history of the past and the experiences of the century have established, demanded, or foreshadowed. If it contain errors, they will be found to be in the interest of liberality and humanity, never in support of the strong against the weak. It may need to be pruned of its redundancy of too vigorous republicanism, but you will find no knotted, gnarled, deformed outgrowth of tyranny to lop off. We have endeavored to draft such an instrument as will secure good government to a large and growing community. We believe it will be acceptable to congress. If not, the right of amendment, revision, or total rejection remains with you. To the discussion of any amendment, or of any revision, or to a proposition for the entire reconstruction of this constitution, I will cheerfully listen; but against the utter rejection of our petition I must earnestly protest, and to this thought I now address myself.

I assume that

UTAH HAS A JUST CLAIM TO THE PRIVILEGES OF STATEHOOD. In support of this assertion the temptation to recall to your recollection some of the facts of history, is almost irresistible. You remember that the first settlers of that section of the country, chiefly natives of New England and the Middle States, left the soil of the United States and journeyed into what was not only a foreign land, but what was at that period equally an unknown and unexplored desert. They left the land of their birth, impelled thereto by threats of destruction and deeds of violence. Their westward journey commenced in 1846. In the summer of that year they crossed the Missouri river and struck out for the vast wilderness beyond. You, who have traversed that immense and desolate tract, with the rapidity of modern travel, with much of comfort and something of luxury, can form some faint idea as to what the journey must have been over a quarter of a century ago. You will readily believe that it required all the faith and courage possessed by mortals, to sustain this band of people, embracing several thousands of men, women and children, during a march having no parallel in modern history, either for the sufferings endured, the fortitude exhibited, or the simple trust which defied peril, and assured the wanderers of a haven somewhere towards the setting sun. You know full well, too, that the labor of moving unceasingly a great army like this, encumbered with the aged, the infant, and the enfeebled, would be likely to demand the best efforts of all the strong hands and active brains which such a community could supply, and you will wonder how it was that this moving mass, in the labors of which each able-bodied person had a place, could spare half a thousand of their best and bravest men for war purposes, in answer to a demand from the President of the United States. Yet the levy was made, and the troops were instantly supplied. For, before the exodus of this community from the then remote frontier of Iowa, in the early spring of 1846, Mexico felt herself aggrieved on account of the passage of a joint resolution by congress, providing for the annexation of Texas to the Union, and war was declared between that confederacy and the United States.

The history of the colony now under consideration, as well as the history of that war, agree that 520 men, the flower of that migrating flock, were demanded by the war-officers of the government, in the name of President Polk, for service in the field, and that they were furnished without delay. The pathway of the husband and father diverged from that of the wife and children; but the two conquering columns, still tending westward, pressed forward, the peaceful band fortifying itself in the very heart of the enemy's outlying country—the valley of the Great Salt Lake—while the soldiery marched onward to the Pacific—both forces absolute conquerors in their own peculiar sphere and with their own appropriate weapons. The discovery of gold in one of the then Mexican States has been authoritatively attributed to some members of this battalion, who, while digging a mill-race near what was then known as New Helvetia, threw up with their shovels some shining particles, mixed with the sand in which they delved. You remember the excitement which followed that discovery; the vast and ever recurring waves of humanity which were washed upon that remote shore; the treaty which gave to us the land which we had won and to which our good fortune had added a new and golden appellation; the magnificent sovereign State erected in 1850 from the soil thus acquired, upon the margin of the Western sea; and the other and adjoining division of that territorial acquisition erected to sovereignty upon the solid basis of her silver mountains, fourteen years later. The result has manifested the guiding hand of Providence in the annexation of Texas, the conflict with Mexico, the acquisition of an imperial domain, and the addition of States rich in the precious metals, to the flourishing sisterhood.

The treaty which endowed us with these prosperous sovereignties, was wisely conceived. It was made as binding as any compact upon which two governments could mutually enter. It was of no temporary character, but its provisions were to remain in force throughout all time.

We find by the 8th and 9th articles of that treaty that those residents of the ceded territory who prefer to remain there, may either retain the title and rights of Mexican citizens, or acquire those of citizens of the United States; that they shall decide the question within one year after the ratification of the treaty; that a failure so to elect within the year shall be received as an admission that they desire to become citizens of the United States; that such of these inhabitants as shall not elect to preserve the character of citizens of the Mexican Republic, shall be incorporated into the Union, and be admitted at the proper time (to be judged of by the congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution, and in the meantime shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion, without restriction. Other articles provide for mutual negotiations, the appointment of commissioners, the arbitration of a friendly nation, &c., in the event that either party seemed to fail to keep its treaty stipulations; and lay down rules for conducting a war, should the difference reach that extremity.

Now, it has been held that by the expressions of the treaty which set off to a neighboring nationality a considerable body of people, Mexico did not contemplate for that people an anomalous system of Territorial government, such as has been temporarily imposed by Congress upon sparsely populated districts, but rather, that she had in view for her States thus disposed of, a form of government not less republican in character, and not less independent in fact, than that which had existed prior to the cession, or than that enjoyed by other political divisions of the nation receiving the cession. The opinion has been recently expressed upon the floor of congress, by the member from Missouri (Hon. Mr. Blair,) and sustained by much cogent reasoning, that the pledge contained in the treaty to "incorporate into the Union" those citizens of the ceded country, who by their action or inaction, should decide in favor of American citizenship, and to admit them "to the enjoyments of all the rights of citizens of the United States according to the principles of the Constitution," was intended by Mexico to provide sovereign Statehood for her several dependencies at the expiration of the designated year of probation, and that this population, "in the meantime"—that is during this brief period of minority—should "be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion, without restriction." Whatever may be the opinion of gentlemen as to the period when, by the treaty, the vast country thus acquired was to be broken up into sovereign States, it will, I think, be generally conceded that the argument made use of two years later, in 1850, in behalf of the admission of California—the extreme western portion of the acquisition—that early admission was contemplated by both nations—was fully authorized, not only by the terms of the compact, but by the genius of the two governments. It is true that at the period of the date of the treaty, Mexico was, practically, a subjugated nation. A portion of her outlying territory, remote from the seat of the general government, had been possessed by the two advancing columns of which I have spoken—the peaceful and the warlike, while at the same time our conquering arms had been borne inward from the sea to the capital. But her nationality was intact, her legitimate rulers survived, notwithstanding the overthrow of the usurper Santa Anna, and she was competent to treat with her victors. She did not surrender a goodly portion of her domain and a multitude of her people, without receiving an equivalent for the one and ample pledges for the well-being of the other. The equivalent for the territory was 15,000,000 of dollars in gold, which we paid; the pledges in behalf of the people were that they should be cared for and protected in all the rights and privileges then enjoyed, and speedily "admitted to the enjoyment of all the rights of citizens of the United States according to the principles of the constitution." These people were not bartered as chattels. They were not sold as slaves. The constitution of the Mexican confederation would not permit such an act. The free, enlightened, liberty-loving spirit of its chief ruler would abhor it. Slavery in every form was prohibited in the Mexican constitution. You remember that negro slavery existed at that period in a State of the Union upon the eastern border of the ceded territory, and that when a proposition for its annexation to that slave State was discussed in congress, it was held by some of the ablest statesmen of the period, that such an act would not only be contrary to the genius of the Mexican republic, but would also be in utter disregard of the treaty stipulations, which contemplated the early erection of free as well as sovereign States, for the land thus disposed of, and for the people who should decide within one year thereafter, to accept the terms. For one year the "eminent domain," the absolute dominion, was unconveyed, in order that the voice of the people thus wrested from the government under which by election or by the accident of birth they had found protection, might be heard. That dominion, when finally exercised, was to assume the common, well known, well understood and desirable form of the federal compact. A lasting peace was to be secured by the erection of equal and sovereign States in the immediate neighborhood. The glory of the parent government, thus reluctantly parting with some of her children, was to be subserved by the added greatness and power which would come to them. The ties of neighborhood would remain unbroken. The hand of friendship would be extended across the new border. These equal States of the Union, still united by the ties of commerce and contiguity with their late sisterhood, would become generous intermediaries, in the event of collision between the old government and the new. With, nominally, a voice in the senate as potent as that enjoyed by other States, the treaty would be sure of a generous interpretation, should the power which created, be called upon to construe it.

It is folly to say that no such considerations entered into the negotiations. No two individuals, competent to bargain for property, would have failed to reflect upon the probable results of the sale, alike to the two contracting parties and to the tenants in common, whose interests were to be affected by it. What individuals could not fail to remember, governments would never ignore. The natural jealousy of nations as to the severing of territory and the denationalizing of subjects, the history of the treaty as presented by Mr. Justice Clifford—the member of Mr. Polk's cabinet who acted for our government in its negotiation—and of Hon. N. P. Trist, who executed it; the declarations of senators who ratified it; and, finally, the language of the instrument itself, conclusively establish the fact. The spirit of the treaty contemplated States only; whether any other system of government could be permitted under any reasonable construction of its language, we will consider presently.

Probably no senator gave to the subject of that treaty, the obligations which it imposed upon us, and the effects produced by it upon the citizens of the ceded territory, more profound thought, or enunciated more fittingly its true sentiment, than Mr. Seward. His able speeches in the senate on several occasions, and particularly on two, the first on the application to admit the western portion of the section under discussion, to the Union, under the name of California, with a constitution framed without an enabling act; the second, on the proposition to add a portion on the eastern border of the tract, to the State of Texas, and to give to another portion one of those mongrel establishments known as a "Territorial government"—are as applicable to-day as when uttered twenty-two years ago; and it is to the shame of the government which seems to have forgotten pledges solemnly made and with all the gravity which could be imparted to the act of nations, as it is to the sorrow of that portion of the ceded territory yet held in colonial bondage, that the eloquent words of the venerable statesman must plead for a hearing to-day. Speaking of the citizens of one portion of this acquired territory, he says:

"They are a people having rights as important and as definite as the rights of any people in the United States. They have undergone a change of sovereignty only, but in all other respects their rights are unchanged. When they lost the rights secured to them by the constitution of Mexico, they acquired the rights of American citizens, secured to them by the constitution of the United States. Those rights involve the protection of their lives, of their liberty, and of their territory. All these are rights of which the United States can lawfully deprive no community on earth. They may extend their conquering arm over States and Territories and Provinces, but it carries with it freedom and security to the subjugated countries. . . . . You have covenanted to bring this region into the Union, not as a territory, not as a province, not as a colony, but as a State."

The treaty stipulations were discussed at length by Mr. Seward, when the scheme of Southern statesmen was on foot for the enlargement of the area of Texas by the addition of a portion of the then newly acquired territory, and the adoption of a Territorial goverment for another division. Mr. Seward met this with a counter-proposition—to establish new States. In his remarks he contended that the treaty contained no provision whatever, either for parceling out the ceded territory among existing States, or for bringing it into provincial or territorial degradation; that it was fair and just, therefore, to say that the treaty would be broken by denying to the people occupying that domain, the rights and position of a State; that it was only fair to presume that if the United States had contemplated holding indefinitely in territorial vassalage the acquired country, some expression to that effect would have found a place in the treaty, and that in the absence of such intimation, it must be concluded that statehood was alone contemplated. While admitting that the right to judge of the appropriate time for such admission was reserved to congress, he still declares that no other power is so reserved, and insists that congress has no power to create for it any form of government except the government of an equal and sovereign State; that the reservation in the treaty keeps the ceded provinces in the exact condition in which the treaty found them until admitted as States. Alluding to his proposition for immediate admission, he says:

"My proposition is most compatible and harmonious with the constitution of the United States. It is a remarkable feature of that constitution that its framers never contemplated colonies, or provinces, or territories at all. On the other hand they contemplated States only: nothing less than States; perfect States; equal States; as they are called here sovereign States. The stipulation in the treaty reserving to congress the right to decide upon the time when, is to be regarded as reserving not the exercise of discretion to oppress the people . . . but a discretion to be exercised for the benefit and welfare of that people—a discretion for their good, not for their oppression and ruin. What, then, is the time when they ought to be admitted? That is the only question. That time must have come whenever it shall have happened that immediate admission has become necessary to save the liberties of her people and the integrity of her territory. That is the time precisely. . . . . There is only one condition which the constitution recognizes; and that is, that she should present a republican form of government."

Mr. Seward's opinions with reference to the principles enunciated in the treaty, as well as the form of government contemplated by the framers of the constitution of the United States, are entitled to great respect. He spoke as a senator, a party to a contract which he was construing, and which he was not likely to construe unfavorably to his principal, the United States. In the spirit and in the letter of the compact, he could discover nothing but immediate and sovereign statehood for the new acquisition. In this respect he found this new and supreme law in harmony with the great fundamental law which authorized it—the constitution. That instrument, intended as it was for the overthrow of the last relic of colonial oppression—inspired, in fact, by the miseries inherent in that system—contemplated, in his opinion, a State government for each appropriate geographical or political division of the existing or prospective national domain. The spirit of the treaty was thus in consonance with the spirit of the constitution, which gave to the treaty vitality, authority and supremacy. I think the language of both will be found in equal harmony with their spirit and intent.

In reference to the binding nature of treaties over cessions of territory, Story remarks: "Ceded territory becomes a part of the nation to which it is annexed on the terms stipulated in the treaty, if such terms exist, otherwise on such terms as its new master shall impose. . . . . But the general laws not strictly political, remain as they were, until altered by the new sovereign. If the treaty stipulates that they shall enjoy the privileges, rights and immunities of citizens of the United States, the treaty as a part of the law of the land becomes obligatory in these respects."

The language of the treaty is, happily, not altogether new, but was used, in substance, in the Louisiana treaty of 1803. By the third article of that treaty it was stipulated, that, "the inhabitants of the ceded territory shall be incorporated in the United States and be admitted as soon as possible, according to the principles of the federal constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States, and in the meantime they shall be maintained and protected in the enjoyment of their liberty, property and the religion they profess."

Concerning this article of the treaty, Mr. Chief Justice Marshall says: "This article obviously contemplates two objects. One that Louisiana shall be admitted into the Union as soon as possible, on an equal footing with the other States, and the other that, till such admission, the inhabitants of the ceded territory shall be protected in the free enjoyment of their liberty, property and religion. Had any one of these rights been violated while these stipulations continued in force, the individual supposing himself to be injured might have brought his case into this court, under the twenty-fifth section of the judicial act. But this stipulation ceased to operate when Louisiana became a member of the Union, and its inhabitants were admitted to the enjoyment of all the rights, advantages and immunities of citizens of the United States."

Of the stipulation contained in the article, Mr. Justice Curtis says: "It clearly appears from the language of the article, and it has been decided by this court, that the stipulation was temporary, and ceased to have any effect when the then inhabitants of the territory of Louisiana, in whose behalf the stipulation was made, were incorporated into the Union." It would seem equally clear that the stipulations of the treaty would remain in full force until the complete act of Union or admission as a sovereign State was consummated.

We have seen that the people of the ceded territory were—by a solemn compact, a supreme law, enacted more than twenty-four years ago—to be speedily "admitted to the enjoyments of all the rights of citizens of the United States, according to the principles of the constitution;" it is proper, therefore, to inquire concerning the nature of the rights conferred upon citizens by the 'principles' of that instrument. For the enjoyment of such rights we are bound to plead. Whatever the constitution authorized, and the treaty made thereunder, stipulated, we shall demand—with this and nothing less shall we be content. Our part in the subjugation of a foreign land may be forgotten; our labors, for a quarter of a century in the wilderness, may be ignored; the bond remains. The constitution is immortal; the treaty is for all time.

We may judge of the principles of the constitution by the principles of its framers, and by the avowed objects of its construction. Primarily, "a more perfect union" than was provided for under the old confederation, was the result sought. To this initial object was added a provision for expansion. Madison declared as follows—and Hamilton and Jay reiterated the sentiment in many forms:

"The immediate object of the federal constitution is to secure the union of the thirteen primitive States, which we know to be practicable, and to add to them such other States as may arise in their own bosom or in their neighborhoods, which we cannot doubt to be equally practicable."

This power of expansion is universally admitted. On this point the supreme court says: "The power to expand the territory of the United States by the admission of new States, is plainly given, and in the construction of this power by all the departments of the government, it has been held to authorize the acquisition of territory, not fit for admission at the time, but to be admitted as soon as its population and situation would entitle it to admission. It is acquired to become a State, and not to be held as a colony and governed by congress with absolute authority."

It has been maintained by able jurists that the constitution contains no express grant of power to organize and govern what is now known to the laws of the United States as a Territory: that whatever power of this kind exists, is derived by implication from the capacity of the United States to hold and acquire territory and the necessity that it should have some government. On the other hand it has been claimed that the constitution has not failed to make express provisions to this end, and that it is found in the third section of article four of the constitution.

I look in vain, however, in the literature of the time, for any hint at an intermediate form of government between the condition then existing, and complete statehood. As Mr. Seward declares, States, perfect States, equal States, sovereign States, appear to be the only governments known to that instrument or to its framers. From whence, then, does congress claim to derive its power to organize provincial or colonial governments on such portion of the public domain as may not have been admitted as States? Are the "principles of the constitution" operative and active under that form of government?

First as to the source of authority. This is claimed to exist, as I have said, in article four of the constitution, which gives to congress the power to make all needful rules and regulations for the government of the territory and other property of the United States. It is important to determine what the phrase "territory," as here used, implied. If we can credit the statements made in the debates in convention and those which appear in the periodicals of the time, and if we are willing to admit in evidence the opinions of the supreme court of the United States and the statesmen of the nation, we are forced to the conclusion that this clause of the constitution simply had reference to the then existing territory of the United States—the "Northwest Territory."

In 19th Howard, supreme court reports, p. 395, the opinion is given that the provision in the constitution giving congress power to make all needful rules and regulations respecting the territory of the United States, means, simply, that "the power there given, whatever it may be, is confined, and was intended to be confined to the territory which at that time belonged to or was claimed by the United States, and was within their boundaries, as settled by the treaty with Great Britain, and can have no influence upon territory afterwards acquired from a foreign government. It was a special provision for a known and particular territory and to meet a present emergency, and nothing more."

This tract, ceded by Virginia pending the ratification of the constitution, was a bone of contention between the several States. It was known as "waste land," without population or improvement. Virginia claimed its sole ownership, because, in the treaty with Great Britain, it fell within her limits. Heavy war-debts existed in several States, and these wanted the tract sold for the common benefit. The controversy over this territory was becoming bitter, and interfered with the ratification of the constitution, in which instrument Virginia took an especial pride, it having originated in that State.

To stop all discussions, Virginia ceded the territory in dispute to the United States. She desired certain stipulations from congress in view of the probable future settlement of the vast region, which were granted, and are now known as the "ordinance of '87."

The provisions of this ordinance deserve consideration, because this measure, designed to achieve a temporary purpose, is the basis of all the wrongs which the "Territories" have endured. As a basis of temporary government it is, however, far less reprehensible than the territorial system which ultimately grew out of it. Among other provisions in the enactment, we find congress pledging herself to these conditions: Freedom of religion; judicial proceedings according to the course of the common law; capital offences to be bailable; no man to be deprived of his liberty or his property but by the judgment of his peers or the law of the land; and that there should be formed in the territory, not less than three nor more than five States; that whenever either of the said States contain sixty thousand free inhabitants, such State shall be admitted on an equal footing with the original States; that congress might admit such State before she had sixty thousand free inhabitants, and that the only condition absolutely essential to admission was that the constitution adopted by said State should be republican in form and in conformity with the plan of the ordinance.

The terms of the instrument clearly indicate its temporary character. It provided for not less than three nor more than five new States, and the power of the ordinance was to cease as fast as such States were formed. It was a treaty between the State of Virginia and the congress of the then confederation. Virginia claimed ultimate and not very remote statehood for her outlying domain northwest of the Ohio river; and pending statehood, a liberal government as compared with existing governments. The details were to be left to congress, and so, to provide for those details, a clause was inserted in the constitution, which was at that very hour being framed, giving to congress the power to make "all needful rules and regulations" for the government of the territory and other property of the United States, such as forts, arsenals, dockyards, &c., all of which are catalogued in the clause alluded to. Clearly, Virginia could not make stipulations for the government of territory which might afterwards be ceded by Mexico, Russia or Great Britain! Beyond question, the territorial system of gonernment, in its original form, the ordinance of '87, was intended to be confined to the Virginia cession. That ordinance was unconstitutional in this, that it was passed before the constitution was adopted. After the adoption of the constitution, congress, by resolution passed October 10, 1780, re-enacted the ordinance, and pledged itself to convert the territory covered by the ordinance, and such other lands as might be acquired, into States, with all the powers of the other States. The same resolution provided for the appointment by the President of officers for the Territory. Hamilton declared, when speaking of the action of congress in the matter of the Northwest Territory, and the organization of a Territorial government therein: "All this has been done, and done without the least color of constitutional authority." The supreme court decision, in 19th Howard, from which I have quoted, rather hesitatingly admits the possible right of congress to legislate for the Northwest Territory, and says:

"The power which congress may have lawfully exercised in this territory, while it remained under a Territorial government, and which may have been sanctioned, can furnish no justification and no argument to support a similar exercise of power over territory afterwards acquired by the federal government."

If, as Hamilton declared, the organization of a government other than that of a State, for the northwest territory, was "done without the least color of constitutional authority," or if, according to the United States supreme court, the power exercised by congress over the territory *may* have been lawfully exercised, but "can furnish no justification and no argument to support a similar exercise of power over territory afterwards acquired by the federal government;" if, as the supreme court has since held, territory "is acquired to become a State, and not to be held as a colony and governed by congress with absolute authority," we are irresistibly drawn to the conclusion, that the more recent acts of congress, organizing Territorial governments on the general basis of the ordinance, but far less republican in detail, are acts of usurpation, uncontemplated by the constitution, and, in the case before us, in violation of treaty obligations.

But in case it is charged that the assumptions of the great minds, from whom I have quoted, are unauthorized and incorrect, I think I may challenge contradiction for the remark that the framers of the constitution did not contemplate the perpetual or even long-continued existence of a single citizen of the United States—much less of any considerable body of such citizens—on the soil of the republic, and yet beyond the protection of the constitution. It is safe to assert, however, that the people of the Territories—of the organized and unorganized alike—are, and have ever been, without the protection of the constitution.

I am aware that the contrary position has been asserted. I know that in 1849, on the floor of the senate it was argued that the constitution could, by act of congress, be extended over the Territories, as well as over the States; over everything, in short, to which the United States laid claim. I know that one senator declared that the constitution was its own intepreter in this particular, and that, inasmuch as it declares itself to be "the supreme law of the land," it meant that it was pre-eminently the supreme law of the Territories, because the Territories were not only a part of "the land," but were furthermore, that particular part over which the federal government had especial power under the constitution. And I remember, too, the object in view, when this sophistry was employed on the floor of the United States senate. It was a weak invention—one of the many weak inventions—of the slave power, beleaguered and beset on every hand. It was an effort on the part of that power to carry slavery into this very territory, then undivided, which had been ceded by a non-slaveholding republic. Mr. Calhoun was the senator to whom I have alluded; the sophistry which I have quoted, is his. His object was plain. The constitution recognized involuntary servitude; to extend its provisions over the Territories would be to engraft slavery upon them. A bill was therefore framed, providing three "temporary governments," as all Territorial governments are called whatever they prove to be in fact—for the country then lately acquired from Mexico, which governments were to be known as California, Utah and New Mexico. In that bill it was provided that the constitution of the United States should be extended to these Territories. The northern senators rose up as one man, "denying the power of congress to legislate the constitution into the Territories." Some of the remarks of the great expounder of that instrument—Mr. Webster—are so pertinent to the position which I assume, that the constitution does not protect the rights of the citizens of the Territories—that I am impelled to quote them at this point:

"It is of importance . . . . that we should seek to get some conception of what is meant by the proposition, in a law, 'to extend the constitution of the United States to the Territories.' Why, sir, the thing is utterly impossible. All the legislation in the world . . . . . could not accomplish it. The constitution—what is it? We extend the constitution of the United States by law to Territories? What is the constitution of the United States? Is not its very first principle, that all within its influence and comprehension shall be represented in the legislature which it establishes, with not only a right of debate, and a right to vote in both houses of congress, but a right to partake in the choice of the President and vice-president? And can we by law extend these rights, or any of them, to a Territory of the United States? Everybody will see that it is altogether impracticable. . . . . Let me say, that in this general sense there is no such thing as extending the constitution. The constitution is extended over the United States, and over nothing else. It cannot be extended over anything except over the old States and the new States that shall come in hereafter, when they do come in. . . . The honorable senator from South Carolina, conversant with the subject as he must be, from his long experience in different branches of the government, must know that the congress of the United States have established principles in regard to the Territories that are utterly repugnant to the constitution. The constitution of the United States has provided for them an independent judiciary; for the judge of every court of the United States holds his office upon the tenure of good behavior. Will the gentlemen say that in any court established in the Territories the judge holds his office in that way? He holds it for a term of years, and is removable at executive discretion."

In reference to this speech senator Benton said that, "All this was sound constitutional law, or, rather, was veracious history, showing that congress governed as it pleased in the Territories independently of the constitution, and often contrary to it; and consequently that the constitution did not extend to it."

The proposition failed, and the Territories with their "temporary" governments continue outside the pale of the constitution, and therefore without the enjoyment of that republican form of government guaranteed by that instrument to all the States of the Union.

It appears, then, that in spite of the fact that sovereign States only were contemplated by the constitution of the United States; in spite of the fact that the Territory of Utah was twice conquered by the people who now inhabit it—first, from a foreign power by the two columns of which I have spoken, and again, through infinite trial and suffering, from the opposing forces of nature; in spite of the fact that all nations have admitted that "to conquer the land is worth the fee simple of the soil;" in spite of the fact that the treaty which ceded them and their conquered domain to the nation from which they sprang, provided for their protection and for their speedy admission into the Union; in spite of respectful petitions for admission often repeated and always unheeded—it still remains, as it has for twenty-two years, a "Territory."

What is a "Territory?" We have seen that it is a sort of government over which the constitution of the republic is impotent; it is safe to say, therefore, that it is anti-republican. We have seen that it is a kind of government uncontemplated in the constitution, and that its model—happily now extinct—was created before the adoption of that instrument: it is reasonable to charge, therefore, that it is unconstitutional. Let us now examine further, and see if it is not another name for the embodiment of the worst features of the worst form of government known to history.

The Territories have no voice in the government. Their rulers, immediate and remote, are aliens and strangers, often enemies. The people of the Territories make no laws. To-day they execute none. They are minor children, without a parent worthy of the name and office; wards, without a guardian such as would be acceptable to any probate court in the land. The Territory has been called the political Botany Bay of the nation; the lazar-house of decayed politicians; the receiving-tomb for defunct party hacks; and has long been recognized as the appropriate place of exile for the useless pensioners of political parties.

The memorial accompanying the constitution which has been drafted for the new State declares that "it is the system of government, rather than those who administer the system, which should be censured." With that sentiment I agree. The system has been and can be administered in such a manner as to secure not the best good of the people, perhaps, but an absence of misrule and absolute tyranny; it is, however, capable of being administered in a manner alike revolting to every honest man, and injurious to the best interests of the community. We all know that power is of an encroaching nature, and that no system of government is other than faulty which does not effectually restrain the power conferred from passing the limits assigned to it. In our Territory, the officer of the government is practically without restraint. Clearly, such a system is as censurable under the guise of a "Republican form of government" as would be a return to the feudal system, from which sprang the colonial system against which our fathers rebelled.

It is a vital political truth that in a republican government, the legislative, executive and judicial departments must be separate and distinct. A sacred maxim of free government is violated by a practical consolidation of these different powers, even though they be technically separated. It has been wisely said by one of America's greatest men, that "the accumulation of all powers, legislative, executive and judiciary, in the same hands, whether of one, a few or many, and whether hereditary, appointed or elective, may justly be pronounced the very definition of tyranny;" and this self-evident truth is repeated by Montesquieu and other political economists.

We might be led to suppose that the framers of the early Territorial organizations neglected to observe that they were providing a government with this absolute identity of power and interest so unequivocally denounced by Hamilton, Montesquieu and others. But it is safe to say that they were fully conscious of the fact. It was, however, only a temporary device, intended to serve a specific purpose, and having a limited field of action. It could not have contemplated the misgovernment of 600,000 people, equal to one-fifth of the entire population of the nation at the framing of the constitution. Besides, in the beginning it was far less tyrannical than now. "Improvements," so called, have been engrafted upon it. A phantom legislature has been provided for it; phantom, I say, because in our Territory it possesses not a single law-making prerogative. By our organic act, this unsubstantial and shadowy legislative department is created and empowered, with the aid of the local executive, to frame laws for the government of the Territory. But its labors can be nullified by a single individual—the appointed governor. His veto is absolute. No bill can be passed over his veto by a two-thirds vote, nor by any other majority. This officer is thus a vital part of the law-making power. The style of the legislative enactment is, "Be it enacted by the Governor and Legislative Assembly." He is called "the executive," and is sworn to "see that the laws are faithfully executed." Here is clearly that union of the law-making and law-executing powers, against which all republicans, the world over, protest. Worse even than this, a premium is paid for dishonesty on the part of the governor. He can defeat legislation by a secret effort, without incurring the odium which would attach to the exercise of his veto power. By the organic acts, congress can finally disapprove and annul such Territorial enactments as it pleases. The governor has only to hint his wishes to some friend in congress, and the honest work of an entire legislative session is destroyed by a joint resolution. The executive has struck this blow at the most vital and important interests of the Territory, but his hand is concealed. Enmity is gratified while the face of the foe is averted.

As to the judiciary. These officers are created by the same power, and may be selected because of their known sympathy and unity of sentiment with this remarkable law-making executive. That inflexible and uniform adherence to the rights of individuals which is so indispensable in the courts of justice, cannot be expected from judges selected as these men are. Their term of office is too brief. It should be "during good behavior," as is the case in the States, and as has worked so satisfactorily whenever employed. A temporary duration in office discourages competent men from quitting a lucrative line of practice to accept a seat on the bench, and this throws the administration of justice into hands incompetent to conduct it with impartiality and dignity. The salary is inadequate. The small stipend attaching to the office of Territorial judge, will usually buy only the services of cheap men and bad lawyers, although the interests involved are vast, and demand for their adjudication the highest talent in the land. Four men thus absolutely execute the three departments of the government, and hold at their mercy a multitude of human beings for whom, perhaps, they have small regard.

Where is the guarantee for the good behavior of the federal officer of a Territory? What security for fidelity to duty, for impartiality in the exercise of authority, do the people of a Territory receive at his hands? None! You cannot impeach him, though he prove a fiend incarnate, because you have no authority so to do. He is in "a Territory," and he is safe. Were his acts of usurpation committed in a State, the constitutional remedy of impeachment would remain. But he is beyond the pale of the constitution, and you cannot molest him. You cannot indict and convict him, for he holds the courts in the hollow of his hand. You cannot appeal to his ambition or to his interest, because you can cater to neither. He is not the servant of the people. He owes them nothing, not even respect. He is their friend if the nobler impulses of humanity chance to possess him, he is their tyrant if it so happens that he prefers tyranny to humanity. Monstrous as is the proposition to confer upon four strangers—the children of one parent, deriving their authority and their compensation from a single source, and therefore naturally of one mind—absolute control over the lives, liberty and property of an entire community, its horrors are intensified by the reflection that these strangers are the natural intermediaries between the people and the general government! that the government, with parental partiality, listens reluctantly to charges against its favorite appointees, and gravely proceeds to "institute inquiries"—of whom? The people? No! Unprejudiced observers? No! Some responsible officer sent out to investigate and report? No! Whom, then? Why the very officials implicated! The inhuman governor; the corrupt, prejudiced or bigoted judge; the venal prosecuting attorney! All information must come through this tortuous channel, to be warped and twisted to meet the views of the careless, corrupt or malignant officials. How shall the appeal of the people, how may the wail of deeply wronged communities, reach the ear of power? It cannot do it.

How different is all this in the remote States! There the executive and legislative bodies representing as they do the people, stand as sentinels over the persons employed in every branch of the National administration, with power to communicate their acts to the national authorities, and the position to render themselves heard at the seat of government. They have political power, senators, votes in congress, a voice in the great work of selecting national rulers. Their rights may not be invaded with impunity.

It may be said in reply that each Territory has its delegate in congress, whose duty it is to represent the condition of his locality and to seek the correction of all existing abuses. I admit this, and I could not excuse myself if I neglected to give all credit to these earnest and noble men. Their duties are many and their toil excessive. With interests to foster and protect, more extensive than most members of congress, they are yet shorn of all legislative power. Representing immense geographical divisions of the national domain, they have not a vote to give, scarcely a voice which can make itself heard, in furtherance of the interests of their people. These gentlemen must take back seats in the house of representatives. The unbending etiquette of this body, declares that the Territorial delegate must talk only on Territorial topics, and not often on these. He may be the peer of any statesman in the nation, with a mind enriched by cultivation and by travel in many lands, but he can open his lips under this dome, only upon subjects connected with Indians and irrigating ditches. He may be a Demosthenes in eloquence, but if he speaks at all it must be to empty benches, on a Saturday. The representatives of a million and a half of square miles and six hundred thousand people, exceeding in able-bodied male adults, and therefore in working and productive capacity, the State of Massachusetts—are practically without voice or influence, as they are without votes, in the national legislature, and are therefore nearly powerless in the various departments of the government.

The facts fully bear me out in the assertion that there is nothing in common between the people of a territory and their rules. There is little to inspire confidence in the so-called courts of justice. The great argument employed by territories seeking admission, has ever been, "Our judges are venal, biassed or incompetent." I need not cite instances; they abound. Read the debates in any convention held in a territory, for the purpose of framing a State constitution, and you will be sated with utterances of this nature. From bad, things proceed to worse. Judicial usurpations grow with the aggressions upon which they have fed. The gentleman from Montana now introduces a bill declaring the United States courts in the territories to be territorial courts when trying offences under territorial laws, and giving to the legislatures of the territories the power to prescribe the rules of procedure in such cases. Why is such a law demanded? It has been the practice since such courts were first organized. But a judge in my territory has departed from it, and has thus rendered new legislation necessary to restore to anything like symmetry this "thing of shreds and patches"—a territorial government. Why has this judge departed from established usage? Because the territorial statute, copied, I understand, from Massachusetts, procured jurors by lot, from the body of the people, indiscriminately. It is said that he was not satisfied with this. It has even been charged that he desired to know something of the opinions of his jurors in advance; that he did not care to waste his time in holding court to prove men innocent. He therefore decided that he was a United States Court all the time. Thus he brought the machinery and power of the United States to bear upon offences against territorial laws, secured jurors on open venire, as is permitted in mail-robbing, counterfeiting, and other high crimes against the United States, and wrested justice from its plain intent. I will not detain you with details. I have carefully prepared a brief bearing upon these law points, but I will not trouble you with it. Happily, a decision of the Supreme Court of the United States, delivered last week by Mr. Chief Justice Chase, the entire Bench concurring, gives at once the law to this Utah Judge, and a sense of relief to those who have watched his course with regret and amazement. That decision charges, as erroneous and illegal, the jury-packing system which has been practiced in violation of statute. This was a civil suit, involving property; in matters of life and liberty no legal method exists whereby the Supreme Court can be reached. The facts have been widely discussed and severely commented upon. That they exist is evident from the fact of the introduction of the bill of which I have spoken, the aim of which is to render such enormities impossible in the future. From these enormities no territory has suffered severely, save Utah. Yet, monstrous as it may appear, the author of that bill has signified his willingness to have Utah excepted from its provisions! He would permit the misguided author of the existing reign of terror in Utah to continue his work of destruction, and would even dignify it, negatively, by failing to stamp as illegal in one territory, what was solemnly denounced as impossible in the remaining eight.

The author of the bill declared in his remarks, on the floor of this House, March 16th, that the "temples of justice are practically closed and society resolved into its original elements" in the territories. To reopen the temples of justice and to overthrow the existing reign of anarchy, he asks legislation, but is willing that Utah, whose needs are vastly greater than those of any other territory, should be deprived of the benefits which he invokes!

But lest this negative action may be insufficient, another bill is prepared, and a member from Indiana is invited to father it, providing for the entire jury-packing system, with all the modern improvements upon the plan of the "Star Chamber," under which, as is shrewdly intended, the lives, the liberties, and the entire worldly possessions of the people of Utah can be wrested from them within one year from and after its passage! It is called a "curative act," because it proposes to legitimatize the abominable acts of the courts, and elevate to the dignity of law the judicial farces lately enacted. It proposes, too, to "cure" the faulty legislation of 1862, making retro-actively vital, what was a nullity before. The passage of that bill would be worth, to any man having the position to execute it, millions of dollars. It would place at his mercy every human life in the Territory. It would enable him to extort the last dollar from every citizen. It would make him a literal autocrat, with absolute power over life, liberty and property. It can never become a law; the Almighty will never permit so gross an outrage to be perpetrated on the soil of the nation, even though the people, who have redeemed that soil from the waste places, are not allowed to shelter themselves beneath the Constitution which they love so well; but if it could become a law, I would not answer for the result. A people who would tamely submit to its execution, in the spirit contemplated by its framers, would have lost the last trace of manliness, and would be deserving only of contempt.

But I must not allow a reference to these new devices of despotism, these adroit schemes for plunder and power, to divert my attention from such a misguided, bigoted or venal judge as the territorial system makes possible and has sometimes provided. His catalogue of offences is a lengthy one, containing a mighty multitude, which no man can number without emotions of disgust. The lives of the citizens are subject to his ignorance, his thirst for power or gain, his deep-seated prejudice, or his temporary caprice. He may assume to pack juries to convict. He may wrest territorial statutes from their plain intent, or adroitly interchange them with congressional enactments, to suit his purpose. He may presume to argue causes from the bench, and to dignify his special pleas with the title of judicial decisions. He may be a despot, who, clothed, unfortunately, in something more than

" . . . . a little brief authority,
Plays such fantastic tricks before high Heaven,
As make the angels weep."